

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Norfolk Division

In the Matter of

ePLUS INC.,

Plaintiff,

v.

**PERFECT COMMERCE, INC.,
SCIQUEST, INC., LAWSON SOFTWARE,
INC., and VERIAN TECHNOLOGIES,
INC.,**

Defendants

Civil Action No. 2:09cv232-HCM-TEM

**DECLARATION OF HARRY F. MANBECK, JR. IN SUPPORT OF
PLAINTIFF *ePLUS* INC.'S OPPOSITION
TO DEFENDANTS' MOTION TO STAY PROCEEDINGS**

I, Harry F. Manbeck, Jr., declare and state as follows:

I. INTRODUCTION

1. My name is Harry F. Manbeck, Jr. I have been retained by counsel for Plaintiff *ePlus*, Inc. ("*ePlus*") as a consultant with respect to the litigation currently before the Court in the above-captioned matter. I have been asked by *ePlus* to consider certain materials relating to the reexamination of U.S. Patent No. 6,023,683 ("the '683 Patent"), and U.S. Patent No. 6,505,172 ("the '172 Patent") (collectively "the *ePlus* patents").

II. BACKGROUND AND QUALIFICATIONS

2. I am a former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks of the United States, having been appointed by former President George Herbert Walker Bush. I served in this position from March 1990 to May 1992. I am a member of the

Bar of the District of Columbia and other jurisdictions, and I am registered to practice before the United States Patent and Trademark Office (“PTO”). I am currently a partner in the firm of Rothwell, Figg, Ernst & Manbeck. My offices are located at 1425 K. Street, N.W., Suite 800, Washington D.C. 20005. A copy of my *curriculum vitae* is attached hereto as Exhibit A.

3. Prior to serving as Assistant Secretary and Commissioner of the PTO, I practiced patent law for over thirty-five years. At the time that I assumed those offices, I was the General Patent Counsel for the General Electric Company. I joined General Electric as a test engineer in 1949, became a patent attorney in 1955, and I advanced to become General Patent Counsel in 1970, a position that I held for twenty years. As the Commissioner of Patents, the General Patent Counsel and in my other positions at General Electric, and in my present practice I have had extensive experience with patent practice and procedures, as well as the policies and practices that were applied by the PTO to the examination of patent applications. In particular, I have considerable expertise in the analysis and interpretation of events occurring during the prosecution of patent applications before the PTO, including reexaminations.

4. I receive compensation from ePlus at my standard hourly rate, currently \$700, for every hour that I devote to providing the expert analysis and testimony requested of me in this case. My travel and incidental expenses related to my engagement as an expert witness are reimbursed by ePlus as well. No part of my compensation depends upon the outcome of this matter.

5. For purposes of forming my opinions and conclusions, I have considered a variety of materials. In particular, I have considered the patents at issue in this matter, the '683 Patent, the '172 Patent and U.S. Patent No. 6,055,516 (“the '516 Patent”). I have also considered the

reexamination file history of the '683 Patent and the request for *inter partes* reexamination of the '172 Patent, as well as other documents as indicated below.¹

III. FACTUAL BACKGROUND

6. I understand and am informed that *ePlus* filed the Complaint against Defendants in the Alexandria Division of this Court on May 19, 2009. I understand that the Court immediately transferred the action to the Norfolk Division of this Court. I understand that each of the Defendants has been served with the Complaint in this matter, and that each of them have filed an Answer. In addition, I understand and am informed that the parties have stipulated to the dismissal of Verian Technologies, Inc. from this action. I understand that the Court has set a trial date for before January 28, 2010. I understand that the typical time until trial for a case pending before this Court is less than one year. I understand that on July 14, 2009, Defendants Perfect Commerce, LLC, Lawson Software, Inc., and SciQuest, Inc. filed a motion to stay this litigation pending the outcome of the reexaminations of the '683 and '172 Patents. I have reviewed Defendants' motion and brief.

7. *ePlus* is a Delaware corporation having a principal place of business at 13595 Dulles Technology Drive, Herndon, Virginia. I understand and am informed that *ePlus* has previously litigated the '683, '516 and '172 Patents. Those previous actions were heard in the Alexandria and Richmond divisions of this Court.

8. During the previous litigations, claims of the patents were construed by this Court. This prior litigation includes:

- *ePlus, Inc. v. Ariba*, Civil Action No. 1:04cv612 ("*Ariba*");
- *ePlus, Inc. v. SAP America, Inc., et al.*, Civil Action No. 3:05cv281 (JRS) ("*SAP*").

¹ The '516 Patent claims are not the subject of reexamination.

9. I am informed that both previous litigations ended favorably for *ePlus* through a settlement and license, in the case of *Ariba* following a favorable adjudication on the merits at trial. I also understand that one of the Defendants in the instant action Verian Technologies, Inc., has entered into a settlement agreement with *ePlus*.

10. The '683 Patent issued on February 8, 2000. The '516 Patent issued on April 25, 2000. The '172 Patent issued on January 7, 2003. The *ePlus* Patents contain claims directed to electronic sourcing systems and methods performed by electronic sourcing systems. The '683 Patent will expire on February 8, 2017. The '516 and '172 Patents will both expire on August 10, 2014.

11. I observe that all three patents share a detailed and lengthy written disclosure. The disclosure describes several embodiments of electric sourcing systems and methods performed by such systems. An electronic sourcing system, according to the patents, is an electronic system for use by a prospective buyer to locate and find items to requisition and then purchase from sources. The electronic sourcing and procurement systems and methods automate internal corporate purchasing processes, resulting in considerable savings in time and expense. Corporate customer users may search for items for sale from multiple selected electronic catalogs (each associated with a supplier source), determine whether a selected matching item found in the catalog search is available in the supplier's inventory, find related items available from other suppliers; and build requisitions from the selected matching items found in the catalog search(es). If a requisition is approved, the system then generates electronic purchase orders to each different supplier identified in the approved requisition. *See, e.g., '683 Patent, Col. 3:3-24.*

12. All three of the patents-in-suit derive priority from Application Serial No. 08/288,577, filed August 10, 1994.

IV. OVERVIEW OF EVENTS OCCURRING DURING THE REEXAMINATION OF THE '683 PATENT AND THE REQUEST FOR REEXAMINATION OF THE '172 PATENT

A. The '683 Patent Reexamination

13. I have considered the publicly-available materials for the reexamination of certain claims of the '683 Patent, which has been assigned Reexamination No. 90/008,104 by the United States Patent & Trademark Office ("PTO") ("the '683 reexamination").

14. On July 17, 2006, SAP AG and SAP America, Inc. (collectively, "SAP"), requested *ex parte* reexamination of claims 26-45 of the '683 Patent. Claims 1-25 of the '683 Patent are not subject to reexamination.

15. On August 17, 2006, the PTO issued a Notice of Failure to Comply With *Ex Parte* Reexamination Request Filing Requirements pursuant to 37 C.F.R. 1.510©. The PTO pointed out several deficiencies in SAP's reexamination request.

16. On September 14, 2006, SAP filed an amended request for *ex parte* reexamination of the '683 Patent. On October 28, 2006, the PTO Examiner granted the Request contending that there were substantial new questions of patentability ("SNQs") raised based on 21 alleged prior art references when interpreted in 20 different ways. I am informed that all of the prior art raised in the reexamination request was raised in the *SAP* litigation.

17. On January 29, 2007, *ePlus* filed a Patent Owner's Statement responding to the Examiner's SNQs. *ePlus* pointed out that many of the alleged references relied upon by the PTO Examiner are not prior art because they did not pre-date the '683 Patent's priority date. Moreover, *ePlus* pointed out that several of the purported prior art references relied upon were not either patents or printed publications, but, rather, were executable computer code and screen

display printouts for allegedly reconstructed computer systems. Thus, *ePlus* contended that such materials were not permissible under the reexamination statute. In addition, several of the purported “references” relied upon for alleged anticipation grounds were actually combinations of references which did not constitute a single publication.

18. On February 29, 2008, the PTO Examiner issued a first Office Action in response to the Patent Owner’s Statement relying on only 4 of the alleged prior art references for anticipation purposes and no longer relying on any SNQs based on alleged obviousness of the claims. The Examiner also no longer relied on any SNQs based on the executable computer code and screen display printouts.

19. On May 29, 2008, *ePlus* submitted a response to the February 29, 2008 Office Action with a supporting declaration from a technical expert. The response contained dozens of pages of argument distinguishing claims 26-45 from the four cited references.

20. On January 8, 2009, the PTO Examiner issued a final Office Action maintaining his rejection of claims 26-45 based on the four allegedly anticipatory references.

21. On March 6, 2009, *ePlus* filed a Notice of Appeal to the PTO’s Board of Patent Appeals and Interferences (“BPAI”).

22. On May 6, 2009, *ePlus* filed an Appeal Brief with the BPAI appealing each pending ground of rejection. The PTO Examiner has yet to file an Answer to *ePlus*’s Appeal Brief.

23. I note that *ePlus* has not amended any of claims 26-45 of the ‘683 Patent during the course of the pending reexamination. Nor has *ePlus* added any new claims.

24. I also note that at least two of the Examiner’s pending grounds for rejection appear to be based upon a legally improper claim construction.

25. Independent claim 26 is illustrative. That claim recites the following:

26. A method comprising the steps of:

maintaining at least two product catalogs on a database containing data relating to items associated with the respective sources;

selecting the product catalogs to search;

searching for matching items among the selected product catalogs;

building a requisition using data relating to selected matching items and their associated source(s);

processing the requisition to generate one or more purchase orders for the selected matching items; and

determining whether a selected matching item is available in inventory.

26. According to the disclosed methods, a computer is provided with a catalog database comprised of at least two product catalogs, each associated with a respective source. '683 Patent, Col. 4:35-37. In this context, a "catalog" is an organized collection of items and associated source information. The catalog item information typically includes such information as part number, price, catalog number, vendor name or ID, as well as textual information and images of or relating to the items. '683 Patent, Col. 4:37-41.

27. The disclosed methods facilitate searching multiple catalogs associated with different sources, *e.g.*, suppliers, vendors or distributors of products or services. '683 Patent, Col. 4:45-46. The disclosed methods permit the customer end-user to select the catalogs to be searched for a needed item. '683 Patent, Col. 9:52-55. The electronic sourcing methods permit the customer to then search the selected catalogs to identify needed items from different sources. Matching items found in conducting searches of the multiple catalogs may be selected for

inclusion in an electronic requisition built by the system. '683 Patent, Col. 10:2-43. As discussed in more detail below, "requisitioning" means "requesting a needed item." Thus a "requisition" is the "formal written request to purchase something needed."

28. Importantly, the disclosed electronic sourcing methods also provide for automatically generating one or more purchase orders from the electronic requisition. '683 Patent, Col. 15:20-49. In this context, a "purchase order" is "a commission or instruction to buy something." Thus, for example, after a requisition has been approved, the electronic sourcing system generates one or more electronic purchase orders from the requisition, for example, generating a purchase order to transmit to each separate source associated with the items included in the requisition. *Id.*

29. The disclosed methods are also used to determine the availability of a selected matching catalog item (*e.g.*, an item found in a search of the selected catalog(s)) in inventory of the associated source of the item. '683 Patent, Col. 14:4-20.

30. During reexamination, as with original examination, although the PTO is to give claims their broadest reasonable interpretation, such interpretation must take into account any definitions presented in the patent specification and must be consistent with the interpretation that a person of ordinary skill in the art would reach. *In re American Academy of Science Tech. Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (cited in *In re Icon Health & Fitness, Inc.*, 496 F.3d 1374, 1378-79 (Fed. Cir. 2007)); *In re Cartright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999).

31. The PTO Examiner, however, appears to have interpreted the claim term "requisition" to mean "an order for something" notwithstanding that the patent claims and specification explicitly require and disclose a separate step of building a "requisition" that occurs prior to the step of processing the requisition to generate one or more "purchase orders." The

'683 Patent specification clearly describes that a "requisition" is "a formal request to purchase something." This step can occur before a user has selected a source from which to purchase a desired item, for example. '683 Patent, Col. 13:63-Col. 14:65. The "requisition" is described in the patent as a document internal to the purchasing organization. It is not transmitted to a supplier. Instead, it may be submitted internally for approval prior to the generation of any purchase order. *See, e.g.*, '683 Patent, Col. 15:10-22. Once the "requisition" is approved, it can be converted to one or more purchase orders by the system. *See, e.g.*, '683 Patent, Col. 15:20-22. Thus, the specification distinguishes between a request internal to the purchasing organization to purchase something (requisition) and the formal contractual agreement to purchase something which is sent from the purchaser to the supplier (the purchase order).

32. Therefore, in my opinion, the Examiner's construction of "requisition" as "an order for something" is incorrect and not sustainable. I believe that each of the Examiner's grounds for rejection which rely upon this improper claim construction is not likely to be sustained by the BPAI.

B. The Request for *Inter Partes* Reexamination of the '172 Patent

33. I have also considered the request for *inter partes* reexamination of the claims of the '172 Patent, which has been assigned Reexamination No. 95/000,487 by the PTO.

34. On July 10, 2009, Defendant Lawson Software, Inc. ("Lawson") requested *inter partes* reexamination of the claims of the '172 Patent before the PTO.

35. *Inter partes* reexamination is different from *ex parte* reexamination in that the third party who requested reexamination has rights to participate in the conduct of the reexamination, including commenting on the Patent Owner's responses to Office Actions, and, like the Patent Owner, has rights to appeal the conclusions of the examiner to the BPAI and to the Federal Circuit.

36. Upon my initial review of Lawson's Request for Reexamination, I noted several deficiencies which may delay or preclude the granting of the Request.

37. For example, the Request fails to explain for each and every claim how the cited materials meet the claim limitations. Nor does the Request identify and explain all combinations of the alleged prior art references that Lawson asserts render the claims invalid as obvious. The PTO regulations require that a request for reexamination include a statement pointing out each alleged substantial new question of patentability based on the cited patents and printed publications, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested. *See* 37 C.F.R. § 1.915(b)(3).

38. Another example of a deficiency in Lawson's Request is that the Request relies on materials that are not patents or printed publications such as executable computer code and screen printouts using such code. Such materials are not permissible bases for a reexamination as 35 U.S.C. § 301(a) limits the art that may be cited in a reexamination request to prior art patents and printed publications. Similar materials cited by SAP with respect to the request for reexamination of the '683 Patent were not relied upon by the PTO Examiner as bases for rejections.

39. Indeed, it appears that the PTO concurs with my assessment that Lawson's Request for *Inter Partes* Reexamination of the '172 Patent is defective. There is an indication on the PTO's Patent Application Information Retrieval ("PAIR") database that the PTO has issued a Notice of Incomplete Reexam Request, thus precluding a filing date from being accorded to the Request. *See* Exhibit B attached. The actual Notice is not yet available so the bases for the PTO's rejection of Lawson's Request are not yet known. Lawson will be given an opportunity

to cure the defects by filing an amended Request. Until the defects are cured, however, the Reexam Request is not accorded a filing date and not put into the queue for review for a decision on whether to grant or deny the Request.

V. ADDITIONAL STEPS FOR *INTER PARTES* REEXAMINATION

40. Attached as Exhibit C is a procedural flowchart taken directly from the United States Patent and Trademark Office's ("PTO") Manual of Patent Examining Procedure ("MPEP") showing the various steps inherent in *inter partes* reexamination proceedings. Attached as Exhibit D is a chart correlating the steps in the flowchart of Exhibit C to the relevant statutes or regulations and the time periods associated with each step in the flowchart. Attached as Exhibit E is a table of statistics issued by the U.S. Court of Appeals for the Federal Circuit indicating the median time to disposition in cases terminated after hearing or submission.

41. There is no deadline, either statutory or under the rules, for the completion of any phase of either *inter partes* or *ex parte* reexamination once the reexamination has been declared and the first office action has been mailed.

VI. PENDENCY RANGES IN *INTER PARTES* REEXAMINATIONS

42. The statistics discussed below were calculated based on a July 2009 review conducted of all *inter partes* reexaminations filed since November 1999, when the PTO established this type of reexamination. The PTO maintains this public information on the PAIR database of its www.uspto.gov website. To review individual records, the user enters the reexamination control number into the PAIR search screen to retrieve the record. *See* chart attached as Exhibit F hereto.

43. The *inter partes* reexamination data points collected for these calculations were:

(1) Filing Date: The date that the PTO assigned a Request for Reexamination its filing date if it meets the filing requirements of 37 C.F.R. § 1.915.

(2) Reexamination Request Determination Date: The date the PTO issued an Order granting or denying the Request for Reexamination.

(3) Initial Office Action: The date the PTO issued a first Office Action.

(4) Action Closing Prosecution (“ACP”): The date the PTO issued an Action Closing Prosecution (“ACP”).

(5) Right of Appeal Notice: The date the PTO issued a Right of Appeal Notice.

(6) BPAI Decision: The date the PTO’s Board of Patent Appeals and Interferences (“BPAI”) issued a decision on an appeal.

(7) Federal Circuit Decision: The date the U.S. Court of Appeals for the Federal Circuit issued a decision on appeal from the BPAI’s Decision.

(8) Reexamination Certificate: The date the PTO issued a Reexamination Certificate that concludes the reexam process.

44. The PTO’s individual *inter partes* patent reexamination records show the following pendency ranges:

Pendency		Lowest Pendency	Highest Pendency
(1)	Filing Date to	13 Days	6 Months
(2)	Reexamination Order Date		
(2)	Reexamination Order Date to	13 Days	2.2 Years
(3)	First Office Action		
(3)	First Office Action to	0.3 Years	5.2 Years
(4)	Action Closing Prosecution		
(4)	Action Closing Prosecution to	1.9 Months	3.5 Years
(5)	Right of Appeal Notice		
(5)	Right of Appeal Notice to	1.5 Years	3.7 Years
(6)	BPAI Decision		
(6)	BPAI Decision to	N/A	N/A
(7)	Federal Circuit Decision		
(7)	Federal Circuit Decision to	N/A	N/A
(8)	Reexamination Certificate		

45. Importantly, since 1999, only eleven *inter partes* reexaminations have received a BPAI Decision to date. Two of these reexaminations addressed related patents and were consolidated for appeal. In the consolidated appeal, the BPAI reversed the Examiner's rejections and the requester has appealed the BPAI's decision to the Federal Circuit. With respect to the remaining nine proceedings, in two cases, the BPAI has issued a final decision, but the time for appeal to the Federal Circuit has not yet expired. In five proceedings, the party that lost at the BPAI did not take further action and, in two of the five, the reexamination certificate has been issued. In the remaining two proceedings, the reexaminations were remanded to the Examiner for further consideration. Thus, in the more than nine years since the *inter partes* statute was enacted, there has only been one *inter partes* reexamination that has progressed from the BPAI to the Federal Circuit. Of course, it is my understanding that even a decision by the Federal Circuit could thereafter be the subject of a petition for *certiorari* to the United States Supreme Court, which has heard a number of patent cases in the last few years.

46. Out of 682 *inter partes* reexaminations filed to date, over 95% received a Filing Date, 84% received a Reexamination Order, 78% received a First Office Action, 42% received an Action Closing Prosecution, 27% received a Right of Appeal Notice, and only 1.6% reached BPAI Decision (*i.e.*, the eleven described above).² Only 3.90% (*i.e.*, 15) of all *inter partes* reexaminations received a Reexamination Certificate at some point during the reexamination. In most of these cases, the patent owner simply decided to drop its opposition to the Examiner's rejections, something I am informed ePlus does not intend to do if a contested reexamination should be ordered.

47. Out of 682 *inter partes* Reexamination Requests filed as of the date of the above review, only 12% of the reexaminations have concluded, *i.e.*, Reexamination Certificates were issued. A Reexamination Certificate may issue following an appeal, but it can issue sooner if the Patent Owner ceases to participate in the proceedings. *See* M.P.E.P. § 2687. As discussed above, only one *inter partes* reexamination has ever proceeded through each step in the entire reexamination process in the over nine years since the inception of the *inter partes* reexamination option. And, that reexamination is still pending because it is on appeal to the Federal Circuit.

48. Using the pendency ranges in the above table, it is clear that *inter partes* reexaminations can and usually do extend over a period of several years. The PTO's statistics for *inter partes* reexamination pendency (Exhibit G) indicate that the average pendency for *inter partes* reexamination is 36.1 months. However, as noted above, this number simply does not reflect the average or expected pendency for cases where the patent owner fights to preserve its patent. In those cases, the actual pendency is much longer.

² The statistics relied on in the body of the declaration include data through July 16, 2009. Exhibit G includes some of the same categories of data but extends only to June 30, 2009.

49. The Institute for Progress, an independent intellectual property think tank co-founded by Kevin Rivette, former Chairman of the USPTO Public Patent Advisory Committee, released a white paper last year addressing the PTO's reexamination pendency statistics. *See* Exhibit H attached. In this white paper, the authors confirm that while the PTO's pendency data may be statistically accurate, it is based on the small number of *inter partes* reexaminations wherein Reexamination Certificates had issued. The Institute's white paper indicates that where the patent owner actively participates in the reexamination process rather than merely allowing it to proceed undefended, the average pendency is actually much longer than for cases where there is no appeal to the BPAI. According to the Institute's research, in cases that are appealed, the pendency is in excess of 70 months, although the data is incomplete for such cases - as I noted at Paragraph 45, only eleven cases have ever received a BPAI decision. This 70 month average pendency period further increases if either party appeals the BPAI's decision to the Federal Circuit. Based on the Federal Circuit's statistics (Exhibit E), it should take on average nearly 9 additional months to reach a final decision regarding the reexamination. However, there has been no *inter partes* reexamination that has ever proceeded through each step in the entire reexamination process through an appeal to the Federal Circuit in the over nine years since the inception of the *inter partes* reexamination option.

50. Given the fact that so few *inter partes* Reexamination Certificates have issued and the circumstances surrounding their issuance, the rate that claims were subject to cancellation or amendment in those completed *inter partes* reexaminations would not appear to be a predictable indicator of the rate of such cancellation or amendment for all *inter partes* reexaminations. However, the PTO's statistics regarding *ex parte* reexaminations — a much larger sample size —

indicate that all claims are cancelled in such reexaminations approximately 11% of the time. *See* Exhibit I.

VII. *EX PARTE* REEXAMINATIONS

51. With respect to *ex parte* reexaminations, because such proceedings have been in effect since 1981 and the number of requests for *ex parte* reexaminations are far greater (9893 to date), it is difficult to track each proceeding through to ultimate conclusion in the same manner as set forth above for the *inter partes* proceedings. However, attached as Exhibit J is a procedural flowchart taken from the MPEP showing the various steps inherent in *ex parte* reexamination proceedings. Attached as Exhibit K is a chart correlating the steps of the flowchart of Exhibit J to the relevant statutes or regulations and the time periods associated with each step in the flowchart.

52. As is evident from the flowchart of Exhibit J and the chart of Exhibit K, the final Office Action in an *ex parte* reexamination proceeding, such as issued in the '683 Patent reexamination proceeding, is far from being a final determination as to the validity of the reexamined patent. The PTO's statistics, however, show that only 11% of the cases result in all claims being canceled. *See* Exhibit I.

53. After issuance of a final Office Action, the Patent Owner then has the right to appeal an Examiner's rejection in a final Office Action to the PTO's BPAI within six months. An Appeal Brief is to be filed by the Patent Owner within two months after the filing of a Notice of Appeal, as *ePlus* has done here. The Examiner is to file an Answer to the Patent Owner's Appeal Brief within two months thereafter. (The Examiner in the '683 Patent proceeding has yet to file an Answer.) In some cases, the Patent Owner may file a Reply Brief if the Examiner raises a new issue in the Answer.

54. Once the issues are fully briefed, the file is transferred from the Examining branch to the BPAI. The Patent Owner may file a request for an oral hearing and the oral hearing before the BPAI is typically conducted within six to twelve months after the request for oral hearing is filed. The BPAI's decision on appeal typically issues within one to three months after the oral hearing, although there is no deadline and the decision may take longer. The Patent Owner may file a request for a rehearing of any unfavorable BPAI decision within two months after receipt of the BPAI decision. The BPAI's decision on the request for rehearing typically issues within one to two months thereafter, although there is no deadline for the decision.

55. If the BPAI's decision remains unfavorable, the Patent Owner has the statutory right to appeal the decision within 60 days to the Federal Circuit. The Federal Circuit will set its own schedule for briefing and argument. As indicated in Exhibit E, the median time for disposition in the Federal Circuit for an appeal of a PTO decision is 8.9 months. There is no deadline by which the Federal Circuit must decide the appeal.

56. The PTO's statistics show an average pendency of 24.8 months for *ex parte* reexaminations, that is from the time the request is granted to the time the certificate is issued. See Exhibit I. Because the number of *ex parte* reexaminations is so numerous, it is impracticable to perform a similar analysis on each one, as was done for *inter partes* reexaminations. However, as with the pendency data for *inter partes* reexaminations, I believe that the 24.8 month average is highly skewed in favor of cases where the patent owner is not vigorously defending its patent. The overwhelming majority of cases in which a final rejection is issued are not appealed to the BPAI. Of those that are, fewer still are again appealed to the Federal Circuit.

VIII. THE PATENTS ARE LIKELY TO BE NEAR EXPIRATION UPON THE TERMINATION OF THE REEXAMINATIONS

57. As noted above, it is likely that in the normal course both the *inter partes* reexamination of the '172 Patent, if granted, and *ex parte* reexamination of the '683 Patent will extend until late in the life of each patent and possibly thereafter in the case of the '172 Patent. Given that one of the rights of the patent owner is to seek a permanent injunction and exclude its competitor from infringement, ePlus will be effectively denied one of the significant remedies available to it under federal patent law. Claims are not cancelled or confirmed in reexaminations until a final action or ACP has issued, all appeals have been exhausted, and a reexamination certificate has issued. *See* 37 C.F.R. § 997(a) ("Upon the conclusion of an *inter partes* reexamination proceeding, the Director will issue a certificate in accordance with 35 U.S.C. 316...."); 35 U.S.C. § 316(a) ("In an *inter partes* reexamination proceeding...., when the time for appeal has expired or any appeal proceeding has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent any proposed amended or new claim determined to be patentable."). *See also* M.P.E.P. § 2288 (Upon conclusion of the *ex parte* reexamination proceeding, the examiner must prepare a "Notice of Intent to Issue *Ex Parte* Reexamination Certificate" (NIRC) by completing form PTOL-469. If appropriate, an examiner's amendment will also be prepared. Where claims are found patentable, reasons must be given for each claim found patentable. In addition, the examiner must prepare the reexamination file so that the Office of Publications can prepare and issue a certificate in accordance with 35 U.S.C. 307 and 37 C.F.R. 1.570 setting forth the results of the reexamination proceeding and the content of the patent following the proceeding.

58. Accordingly, the date for any final cancellation or confirmation of the claims as a result of the reexaminations is likely to take years to complete, and will likely not be completed until late in the life of each patent and possibly thereafter in the case of the '172 Patent. Thus, a stay of this action pending completion of those proceedings has the effect of denying ePlus the right to exclude others from the use of its inventions.

IX. INTERIM FINDINGS IN REEXAMINATIONS

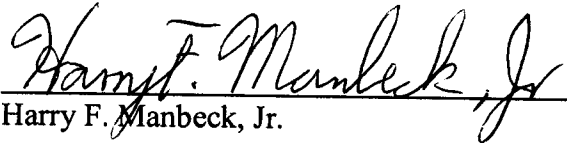
59. A reexamination proceeding, whether *ex parte* or *inter partes*, is not completed, and does not in fact make any changes to the patent under reexamination, until a reexamination certificate is issued that cancels claims, confirms claims, and/or modifies claims and/or the specification. This is so even if amendments have been accepted by the Examiner or the BPAI and even if claims have been finally rejected or finally confirmed by the Examiner or the BPAI.

60. The PTO is free to reconsider its initial determinations in a reexamination prior to issuing a reexamination certificate. *See Fresenius Med. Care Holdings*, 2007 WL 1655625 at *4 (N.D. Cal. 2007).

61. Until a certificate is issued in a reexamination, final disposition of any reexamination proceeding is unknown, and therefore, until such a certificate issues, it remains possible that the PTO's determination in the reexamination will have no ultimate bearing on the scope or life of the patent. *See Fresenius*; *see also Texas MP3 Technologies v. Samsung Electronics*, 2007 WL 3219372 (E.D. Tex. 2007).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 28th day of July, 2009 in Washington, D.C.



Harry F. Manbeck, Jr.

EXHIBIT A

BIOGRAPHY
HARRY F. MANBECK, JR.

Harry F. Manbeck, Jr. is an attorney-at-law and a member of the firm of Rothwell, Figg, Ernst & Manbeck, P.C. The firm and Mr. Manbeck's offices are located at 1425 K Street, N.W., Suite 800, Washington, DC 20005. From March 1990 to May 1992, he was Assistant Secretary of Commerce and Commissioner of Patents and Trademarks of the United States. He was nominated to these offices by President Bush on October 11, 1989 and confirmed by the Senate on March 9, 1990.

Prior to his government service, Mr. Manbeck practiced patent law for over thirty-five years and at the time of his appointment he was General Patent Counsel of the General Electric Company. He joined General Electric in 1949 and advanced to become General Patent Counsel in 1970, which position he held until becoming Commissioner. Prior to joining the General Electric Company, he served in the U.S. Army Signal Corps.

A native of Honesdale, Pennsylvania, Mr. Manbeck graduated with Highest Honors from Lehigh University in 1949 with a B.S. in Electrical Engineering. He received his L.L.B. with Honors from the University of Louisville in 1954. Mr. Manbeck is a member of the District of Columbia, Connecticut, Indiana, Kentucky and Massachusetts bars and is admitted to practice before the Court of Appeals for the Federal Circuit. He is also registered to practice in front of the United States Patent and Trademark Office.

Mr. Manbeck has served as Chairman of the Patent, Trademark and Copyright Section of the American Bar Association; President of the Association of Corporate Patent Counsel; a Director of the Intellectual Property Owners, Inc.; and a Director of the Bar Association of the Court of Appeals for the Federal Circuit. He is also a member of the American Intellectual Property Law Association and the Connecticut Patent Law Association. In 1984 Mr. Manbeck was awarded the Whitney North Seymour Medal of the American Arbitration Association for contributions made to the process of arbitration in the United States.

Mr. Manbeck is married to the former Julia P. McCarthy and they reside in McLean, Virginia.

**PUBLICATIONS AUTHORED BY
Harry F. Manbeck, Jr.**

1. “Voluntary Arbitration of Patent Disputes - The Background to 35 U.S.C. 294”, AIPLA Quarterly J. #4, pp. 268-273, Fall 1983.
2. “Entering Our Third Century”, Keynote Address Before the American Bar Association Section of Patent, Trademark and Copyright Law, Chicago, Illinois, August 4, 1990, 72 JPOS 1177 (1990).
3. “The Evolution and Issue of New Rule 56”, 20 AIPLA Quarterly J., #3 & 4, pp. 137-144, Fall 1992.
4. “The Federal Circuit - First Ten Years of Patentability Decisions”, 14 George Mason Univ. L.R. 499 (1992).
5. “Key License Clauses for Technology License Agreements”, Technology Licensing 1988, Course Handbook, Series #245, Practicing Law Institute, Patents, Copyrights, Trademarks and Literary Property.
6. Author and Presenter, “Current Developments in U.S. and International Law & Policy”, Hatsumei Kyokai (Japan Institute of Invention and Innovation) (Tokyo, Japan; March 8, 1993).
7. Co-Author with C. Chalsen and M. Murray, “A Report on the Recommendations of the Advisory Commission on Patent Law Reform”, Selected Legal Papers, American Intellectual Property Law Association, Vol. X, No. 2, pp. 3-20 (January 1993).
8. Co-Author and Co-Presenter with C. Chalsen, “A Report on the Advisory Commission on Patent Law Reform”, Chizaiken (Japan Institute of Intellectual Property) (Tokyo, Japan; September 16, 1992).
9. Co-Author and Co-Presenter with C. Chalsen, “Techniques for Obtaining a Strong U.S. Patent”, Japanese Group of A.I.P.P.I.; Presented: Tokyo, Japan, September 18, 1992, Published: Journal of the Japanese Group A.I.P.P.I., Vol. 38, No. 1, pp. 16-22 (January 1993).
10. Co-Author with C. Chalsen and M. Murray; and Co-Presenter, “Effective Handling of Jury Trials in Patent Cases”, Presented: Tokyo, Japan; September 18, 1992, Published: Journal of the Japanese Group A.I.P.P.I., Vol. 37, Nos. 9-10, pp. 12-18 (September - October 1992).

95/000,487	ELECTRONIC SOURCING SYSTEM	07-27- 2009::09:12:09
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Transaction History

Date	Transaction Description
07-27-2009	Notice of Incomplete Reexam Request Received but no filing date accorded
07-23-2009	Certificate of Service
07-23-2009	Change in Power of Attorney (May Include Associate POA)
07-10-2009	Information Disclosure Statement (IDS) Filed
07-10-2009	Reexam - Information Disclosure Statement Filed by Third Party Requester
07-10-2009	Receipt of Original Inter Partes Reexam Request

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**CASES IN WHICH HARRY F. MANBECK, JR.
HAS TESTIFIED SINCE JUNE 2005**

1. Case Name: **Cargill, Incorporated v. Canbra Foods, Ltd., Dow Agrosciences, LLC and Dow Agrosciences Canada, Inc.**
Case No.: 03 1209-MO
Court: United States District Court, District of Oregon
Trial: 6/22/05
2. Case Name: **Albemarle Corporation v. Great Lakes Chemical Corp.**
Case No.: 02-505-A-M3 & 02-506-A-M3 (consolidated) (M.D. La)
Court: United States District Court, Eastern District of Virginia, Alexandria Division
Deposition: 11/3/05
3. Case Name: **St. Paul Companies v. Birch**
Case No.: 01-10327RBC
Court: United States District Court, District of Massachusetts
Trial: 1/18/06
4. Case Name: **Meritor Transmission Corporation v. Eaton Corporation**
Case No.: 1:04 cv 178
Court: United States District Court, District of North Carolina, Shelby Division
Deposition: 11/21/05
5. Case Name: **Gobeli Research, Ltd. v. Apple Computer Inc, and Sun Microsystems, Inc.**
Case No.: 2-04-CV-149
Court: United States District Court, Eastern District of Texas, Marshall Division
Deposition: 11/29/05
6. Case Name: **Fisher Tool Co., Inc., et al. v. Gillet Outillage, et al.**
Case No.: CV 04-7550 ABC (SHx)
Court: United States District Court, Central District of California
Deposition: 1/05/06
7. Case Name: **ePlus, Inc. v. SAP AG, et al.**
Civil Action No.: 3:05cv281
Court: United States District Court, Eastern District of Virginia
Trial: 4/3/06
8. Case Name: **Ronald D. Russo v. Ballard Medical Products, Kimberly-Clark Worldwide, Inc., and Kimberly-Clark Corporation**
Case No.: 2:05 cv 00059 TC
Court: United States District Court, District of Utah
Deposition: 5/3/06

9. Case Name: **Certain Flash Memory Devices and Components Thereof, and Products Containing Such Devices and Components**
Investigation No.: 337-TA-552
Court: United States International Trade Commission
Deposition: 5/23/06
10. Case Name: **Fenner Investments, Ltd. v. Juniper Networks, Inc., UTStarcom, Inc., Nokia, Inc., Nortel Networks Corporation, Lucent Technologies, Inc., and Cisco Systems, Inc., Clark Worldwide, Inc., and Kimberly-Clark Corporation**
Case No.: 2:05 cv 05 LD (Davis)
Court: United States District Court, Eastern District of Texas, Marshall Division
Deposition: 7/11/06
11. Case Name: **Taltech Limited v. Esquel Enterprises, Ltd.**
Case No.: C04-974Z
Court: United States District Court, Western District of Washington, Seattle Division
Deposition: 7/19/06
12. Case Name: **Sanitec Industries, Inc. v. Micro-Waste Corporation**
Case No.: 04-3066
Court: United States District Court, Southern District of Texas, Houston Division
Trial: 7/31/06
13. Case Name: **NetMoneyIN, Inc. v. VeriSign, Inc., et al.**
Case No.: 01-441 TUC-RCC
Court: United States District Court, District of Arizona
Deposition: 8/23/06
14. Case Name: **Eaton Corporation v. ZF Meritor, LLC Arvin Meritor, Inc. and ZF Friedrichshafen AG**
Case No.: 74844
Court: United States District Court, Eastern District of Michigan
Deposition: 8/31/06
15. Case Name: **Aspex Eyewear, Inc., Chic Optic, Inc. and Contour Optik, Inc., v. Safilo USA, Inc.**
Case No.: 04 Civ. 7473 (SHS)
Court: United States District Court, Southern District of New York
Deposition: 1/17/07
16. Case Name: **Highway Equipment Company, Inc. v. Cives Corporation and Monroe Truck Equipment, Inc.**
Case No.: C04-147LRR
Court: United States District Court, Cedar Rapids District
Deposition: 5/30/07

17. Case Name: **O2 Micro International Limited v. Samsung Electronics, Co. LTD., Samsung Electronics America, Inc., Samsung SDI Co., LTD., Samsung SDI America, Inc.**
Case No.: 2:04-CV-323 (Ward)
Court: United States District Court, Eastern District of Texas, Marshall Division
Deposition: 2/12/07
18. Case Name: **CPI v. St. Jude Medical, Inc., et al.**
Case No.: 04-0067-SLR
Court: United States District Court, District of Delaware
Deposition: 11/30/06
19. Case Name: **Med Immune Oncology v. Sun Pharmaceutical Industries**
Case No.: 1:04-CV-02612-MJG
Court: United States District Court, District of Maryland
Deposition: 3/9/07
20. Case Name: **Prometheus Laboratories, Inc. v. Mayo Collaborative Services dba Mayo Medical Laboratories and Mayo Clinic Rochester**
Case No.: 04 cv 1200 JAH (RBB)
Court: United States District Court, Southern District of California
Deposition: 3/16/07
21. Case Name: **Armament Systems Procedures, Inc., v. IQ Hong Kong Limited, et al.**
Case No.: 00-C-1257
Court: United States District Court, Eastern District of Wisconsin
Trial: 5/1/07
22. Case Name: **Enzo Biochem, Inc., Enzo Life Sciences, Inc., and Yale University v. Applera Corp. and Tropix, Inc.**
Case No.: 3-04CV-929(JBA)
Court: United States District Court, District of Connecticut
Deposition: 5/11/07
23. Case Name: **Schlindler Elevator Corporation and Inventio AG v. Otis Elevator Company**
Civil Action No.: 06-CV-05377 (RCC)
Court: United States District Court, Southern District of New York
Deposition: 5/30/07
24. Case Name: **Arrow Communication Laboratories, Inc., and Tresness Irrevocable Patent Trust v. John Mezzalingua Associates, Inc.**
Case No.: 5:05-CV-1456 (NAM/EP)
Court: United States District Court, Northern District of New York
Deposition: 8/27/07
25. Case Name: **Sky Technologies, LLC v. Ariba, Inc.**
Case No.: 06CA11889
Court: United States District Court, District of Massachusetts
Deposition: 8/31/07

26. Case Name: **Mobile Micromedia Solutions LLC v. Nissan North America, Inc.**
Case No.: 5:05-CV-230
Court: United States District Court, Eastern District of Texas, Texarkana Division
Deposition: 9/5/07
27. Case Name: **TGIP, Inc. v. AT&T Corp., Verizon Communications, Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Select Services, Inc., MCI, Inc., MCI Communications Services, Inc. d/b/a MCI, MCI Network Services, Inc., Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA, IDT Corporation, U.S. South Communications, Inc. d/b/a U.S. South and d/b/a Interactive Communications International Inc. a/k/a Incomm, Pre Holdings, Inc., Pre Solutions, Inc.**
Case No.: 2-06 CV-105
Court: United States District Court, Eastern District of Texas, Marshall Division
Trial: 9/12/07
28. Case Name: **Amgen v. Ariad Pharmaceuticals, Harvard University, Massachusetts Institute of Technology and Whitehead Technology**
Civil Action No.: 06-259-MPT
Court: United States District Court for the District of Delaware
Deposition: 3/20/08
29. Case Name: **SmarTire Systems, Inc. v. Siemens VDO Automotive Corp., et al.**
Civil Action No.: 1 :07-cv-932
Court: United States District Court for the Eastern District of Virginia (Alexandria Division)
Deposition: 3/4/08
30. Case Name: **Chemfree Corporation v. J. Walter, Inc. and J. Walter Co., Ltd.**
Civil Action No.: 1:04-CV-3711-JTC
Court: United States District Court for the Northern District of Ohio, Eastern Division
Deposition: 5/13/08
31. Case Name: **Sky Technologies LLC v. SAP AG, SAP America, Inc. and Oracle Corporation**
Civ. Action No.: 2:06-cv-440-DF
Court: United States District Court for the Eastern District of Texas, Marshall Division
Deposition: 5/16/08
32. Case Name: **In the Matter of Certain Ground Fault Circuit Interrupters and Products Containing the Same**
Investigation No.: 337-TA-615
Court: United States International Trade Commission, Washington, DC
Deposition: 6/4/08
33. Case Name: **In Re Certain digital Television Sets**
Investigation No.: 337-TA-617
Court: United States International Trade Commission
Deposition: 6/29/08

34. Case Name: **Vaxiion Therapeutics v. Foley & Lardner**
Case No.: 3:07-cv-00280-IEG-RBB
Court: United States District Court, Southern District of California, San Diego
Deposition: 7/8/08
35. Case Name: **Siemens AG v. Seagate Technology**
Case No.: SACV 06-788-JVS (ANx)
Court: United States District Court for the Central District of California, Southern Division
Deposition: 7/17/08
Trial: 12/4/08
36. Case Name: **Verizon Services Corp., Verizon Communications, Inc., MCI Communications Corporation, and Verizon Business Global LLC v. Cox FiberNet Virginia, Inc., Cox Virginia Telecom, Inc., Cox Communications Hampton Roads LLC, CoxCom, Inc., and Cox Communications, Inc.**
Civ. Action No.: 2:08 CV20-JBF/TEM
Court: United States District Court for the Eastern District of Virginia
Deposition: 7/31-18/08
37. Case Name: **D. Yogi Goswami v. Universal Air Technology, Inc., a New Jersey Corporation and Lennox Industries, Inc., an Iowa corporation**
Case No.: 01-02-CA-101
Court: Eighth Judicial Circuit in and for Alachua County, Florida
Trial: 9/11/08
38. Case Name: **New Medium LLC, AV Technologies LLC, J. Carl Cooper, Pixel Instruments Corporation, IP Innovation LLC, and Technology Licensing Corporation v. Barco N.V., and Syntax-Brilliant Corporation**
Case No.: 05 C 5620
Court: United States District Court for the Northern District of Illinois, Eastern Division
Trial: 9/16/08
39. Case Name: **SuperSpeed, LLC v. IBM Corporation**
Case No.: 2:07-CV-089-TJW
Court: United States District Court for the Eastern District of Texas, Marshall Division
Deposition: 4/8/09
40. Case Name: **Timothy & Thomas LLC v. Viral Genetics, Inc. and Haig Keledjian**
Case No.: 06-CV-1813
Court: Northern District of Illinois, Eastern Division
Deposition: 5/6/09

EXHIBIT B

95/000,487	ELECTRONIC SOURCING SYSTEM	07-17- 2009::14:29:23
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Transaction History

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07-10-2009	Notice of Incomplete Reexam Request Received but no filing date accorded
07-10-2009	Reexam - Information Disclosure Statement Filed by Third Party Requester
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95/000,487	ELECTRONIC SOURCING SYSTEM	07-27- 2009::09:12:09
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Transaction History

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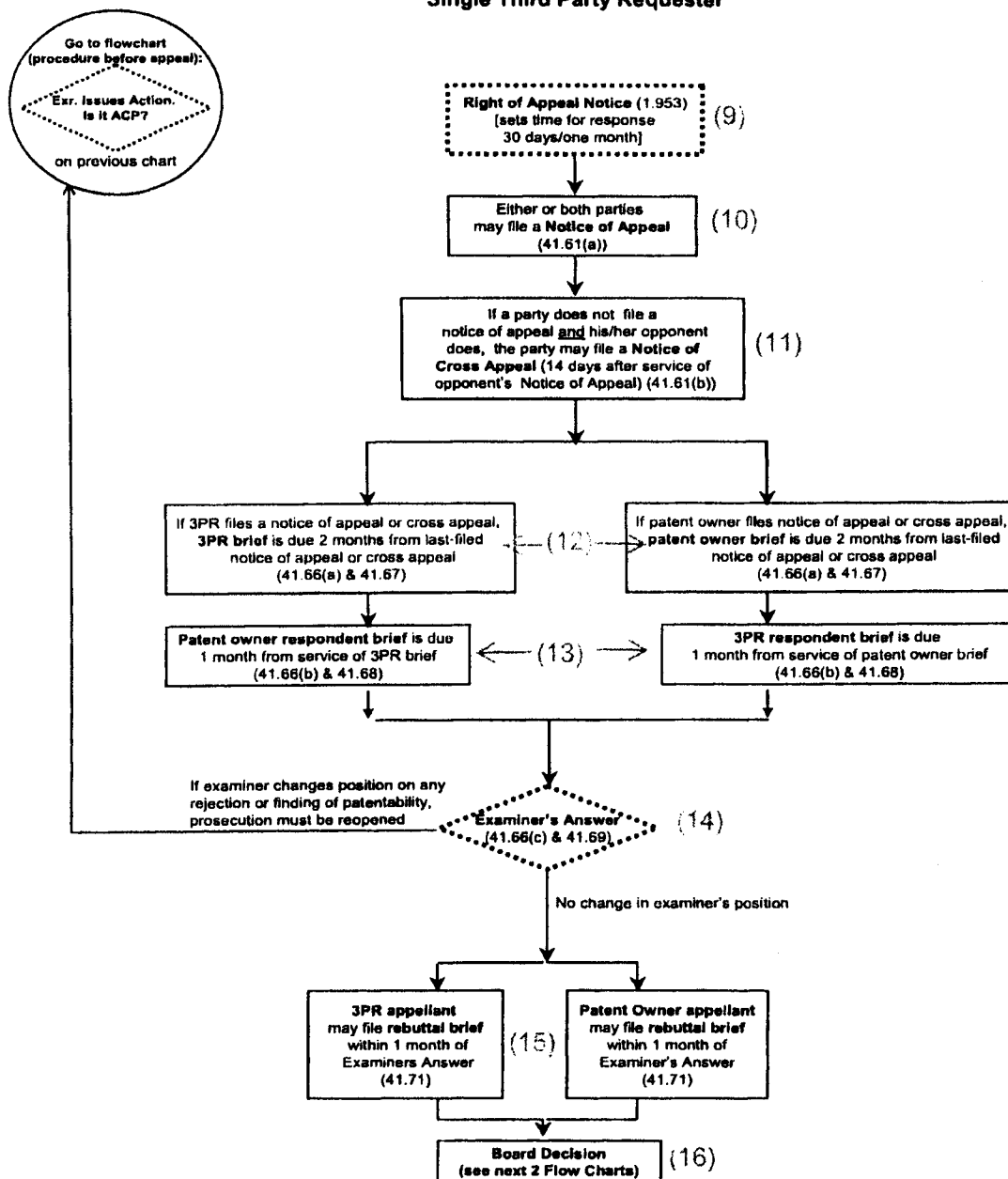
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EXHIBIT C

OPTIONAL INTER PARTES REEXAMINATION

2601.01

**Inter Partes Reexamination (applicable rule section)
APPEAL PROCEDURE
Single Third Party Requester**



Flow chart on page 2600-6 is omitted as it applies only to reexaminations commenced prior to November 2, 2002.

OPTIONAL INTER PARTES REEXAMINATION

2601.01

Inter Partes Reexamination (applicable rule section)
**Procedure Following Board Decision for Reexaminations
 Commenced On or After November 2, 2002**

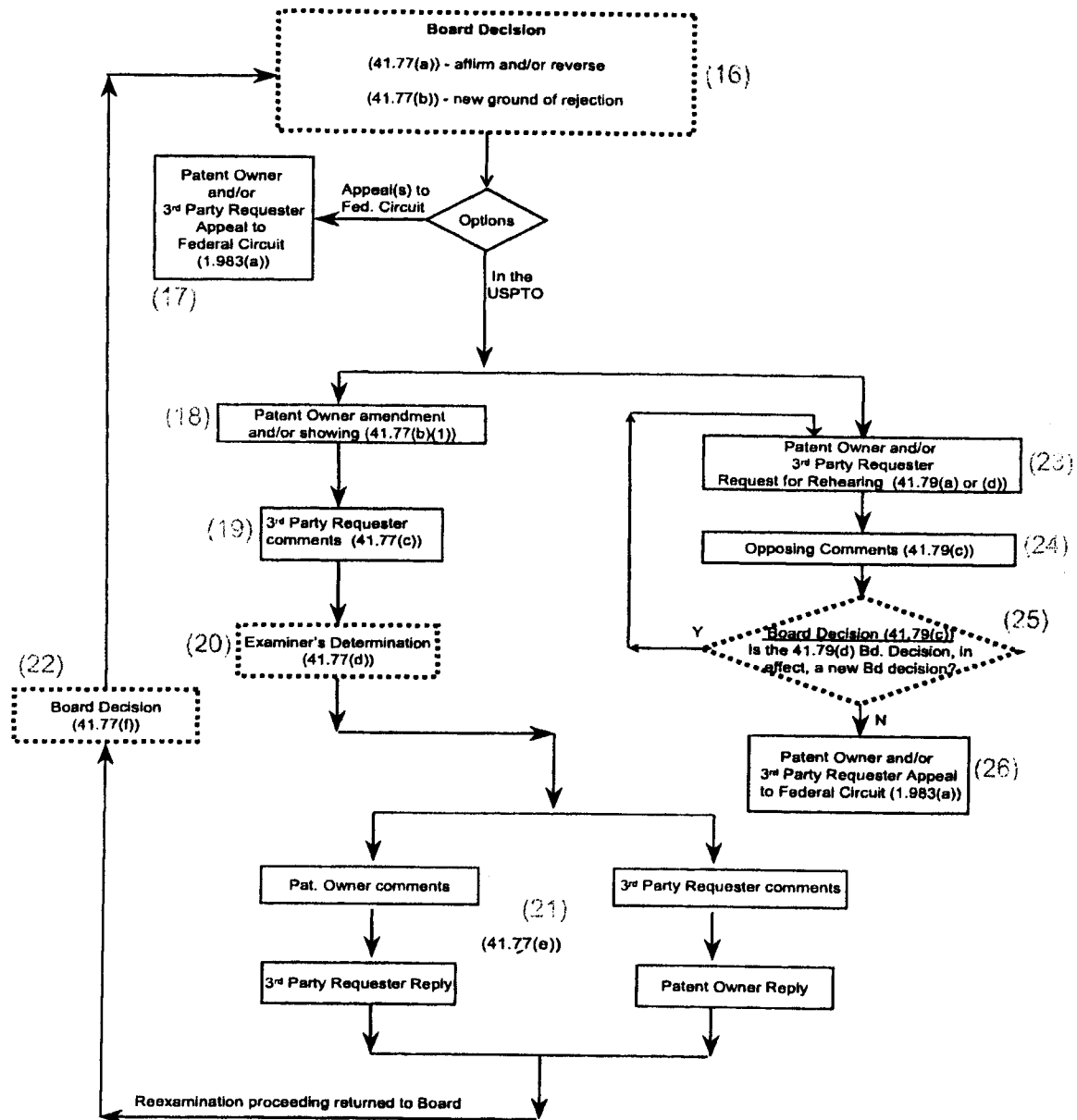


EXHIBIT D

INTER PARTES REEXAMINATION TIME LINE (USE WITH MPEP FLOWCHART)

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	
1.	Request for Reexamination filed	37 CFR § 1.913	
2.	Reexamination ordered and Initial Office action issued	37 CFR § 1.931 (Order for <i>inter partes</i> reexamination.) 37 CFR § 1.935 (Initial Office Action may accompany the order for <i>inter partes</i> reexamination.)	Is O fr ye R en
3.	Patent Owner Response	37 CFR § 1.945	1 da
4.	3rd Party requester comments	37 CFR § 1.947	30 se ov
5.	Office Action issued	37 CFR § 1.949	ra ye
6.	[if Office Action closes prosecution –] Patent Owner submits comments/amendments in response to Action closing prosecution <i>AND/OR</i> Patent Owner files a Rule 1.181 petition	37 CFR § 1.951 Options after Office action closing prosecution in <i>inter partes</i> reexamination. (a) After an Office action closing prosecution in an <i>inter partes</i> reexamination, the patent owner may once file comments limited to the issues raised in the Office action closing prosecution. The comments can include a proposed amendment to the claims, which amendment will be subject to the criteria of § 1.116 as to whether or not it shall be admitted. The comments must be filed within the time set for response in the Office action closing prosecution. MPEP § 2672.VI. ACTION CLOSING PROSECUTION – PREMATURE If the patent owner is of the opinion that the Office action closing	Ac pr se (ty 1 is Pe pr wi

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		prosecution in the <i>inter partes</i> reexamination proceeding is premature, the patent owner may, in addition to the comments submitted under 37 CFR 1.951(a), file a petition under 37 CFR 1.181 within the time period for filing the comments under 37 CFR 1.951(a).	response to ACP.
		MPEP § 2672.III. ACTION TAKEN BY EXAMINER It should be kept in mind that a patent owner cannot, as a matter of right, amend claims rejected in the ACP, add new claims after an ACP, nor reinstate previously canceled claims. A showing under 37 CFR 1.116(b) is required and will be evaluated by the examiner for all proposed amendments after the ACP, except where an amendment merely cancels claims, adopts examiner's suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner.	
7.	3rd Party Responding comments AND/OR response to Patent Owner's Rule 1.181 petition	37 CFR § 1.951 (b) When the patent owner does file comments, a third party requester may once file comments responsive to the patent owner's comments within 30 days from the date of service of patent owner's comments on the third party requester. MPEP § 2672.VI. ACTION CLOSING PROSECUTION - PREMATURE The third party requester may then once file, as a paper separate from any submission under 37 CFR 1.951(b), comments responsive to the patent owner's petition under 37 CFR 1.181 within 30 days from the date of service of the patent owner's petition under 37 CFR 1.181 on the third party requester.	30 days from date of service of patent owner response
8.	Examiner considers comments. Examiner may then issue a Right of Appeal Notice. <i>OR</i>	§ 1.953 Examiner's Right of Appeal Notice in <i>inter partes</i> reexamination. (a) Upon considering the comments of the patent owner and the third party requester subsequent to the Office action closing prosecution in an <i>inter partes</i> reexamination, or upon expiration of the time for submitting such comments, the examiner shall issue a Right of Appeal	ranges from 1.9 months to 3.5 years

	Step in <i>Inter Partes</i> Reexam Flow Chart	Relevant Statute or Rules	Time Period
	Examiner may reopen prosecution.	<p>Notice, unless the examiner reopens prosecution and issues another Office action on the merits.</p> <p>(b) Expedited Right of Appeal Notice: At any time after the patent owner's response to the initial Office action on the merits in an <i>inter partes</i> reexamination, the patent owner and all third party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final determination favorable to patentability, and may request the issuance of a Right of Appeal Notice. The request must have the concurrence of the patent owner and all third party requesters present in the proceeding and must identify all of the appealable issues and the positions of the patent owner and all third party requesters on those issues. If the examiner determines that no other issues are present or should be raised, a Right of Appeal Notice limited to the identified issues shall be issued.</p>	
9.	[if Examiner does not reopen prosecution –] Examiner issues Right of Appeal Notice (Final Office action)	<p>37 CFR § 1.953 (c) The Right of Appeal Notice shall be a final action, which comprises a final rejection setting forth each ground of rejection and/or final decision favorable to patentability including each determination not to make a proposed rejection, an identification of the status of each claim, and the reasons for decisions favorable to patentability and/or the grounds of rejection for each claim. No amendment can be made in response to the Right of Appeal Notice. The Right of Appeal Notice shall set a one-month time period for either party to appeal. If no notice of appeal is filed, prosecution in the <i>inter partes</i> reexamination proceeding will be terminated, and the Director will proceed to issue and publish a certificate under § 1.997 in accordance with the Right of Appeal Notice.</p>	ranges from 1.9 months to 3.5 years
10.	Either or both parties may file a Notice of Appeal	<p>37 CFR § 41.61 Notice of appeal and cross appeal to Board.</p> <p>(a)(1) Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the owner may appeal to the Board with respect to the final rejection of any claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 41.20(b)(1).</p>	within 1 month from Right of Appeal Notice

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		(a)(2) Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the requester may appeal to the Board with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal.	
11.	If a party does not file a notice of appeal and his/her opponent does, the party may file a Notice of Cross Appeal	<p>37 CFR § 41.61</p> <p>(b)(1) Within fourteen days of service of a requester's notice of appeal under paragraph (a)(2) of this section and upon payment of the fee set forth in § 41.20(b)(1), an owner who has not filed a notice of appeal may file a notice of cross appeal with respect to the final rejection of any claim of the patent.</p> <p>(b)(2) Within fourteen days of service of an owner's notice of appeal under paragraph (a)(1) of this section and upon payment of the fee set forth in § 41.20(b)(1), a requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent.</p> <p>MPEP § 2674. Where a notice of appeal or notice of cross appeal is timely filed but is defective, e.g., missing fee or missing portion of the fee, no proof of service is included, it is signed by an inappropriate party or is unsigned, failure to identify the appealed claims; 37 CFR 41.61(f) provides the appropriate party one opportunity to file, within a nonextendable period of one month, an amended notice of appeal or cross appeal that corrects the defect(s).</p> <p>37 CFR § 41.66. Time for filing briefs.</p> <p>(a) An appellant's brief must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross appeal or, if any party to the proceeding is entitled to file an appeal or cross</p>	<p>14 days after service of opponent's Notice of Appeal</p> <p>1 month to cure defects in timely-filed Notice of Appeal</p> <p>2 months from last-filed notice of appeal or cross appeal</p>
12.	Appeal Brief / Cross-Appeal Brief		

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		appeal but fails to timely do so, no later than two months from the expiration of the time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant's brief or an amended appellant's brief may not be extended.	
13.	Reply Brief	37 CFR § 41.66(b). Once an appellant's brief has been properly filed, any brief must be filed by respondent within one month from the date of service of the appellant's brief. The time for filing a respondent's brief or an amended respondent's brief may not be extended.	due 1 month from service of Appeal Brief
14.	Examiner's Answer	37 CFR § 41.66(c). The examiner will consider both the appellant's and respondent's briefs and may prepare an examiner's answer under § 41.69.	typically one to three months after receipt of respondent's brief
15.	[if Examiner does not change position on any rejection –] Either or both parties can file Rebuttal Brief	37 CFR § 41.66(d). Any appellant may file a rebuttal brief under § 41.71 within one month of the date of the examiner's answer. The time for filing a rebuttal brief or an amended rebuttal brief may not be extended.	within 1 month after date of Examiner's Answer
	Request for Oral Hearing (not shown in flow chart)	37 CFR § 41.73(b). If an appellant or respondent desires an oral hearing, he or she must file, as a separate paper captioned 'REQUEST FOR ORAL HEARING,' a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months after the date of the examiner's answer.	within 2 months after the date of Examiner's Answer
	Oral Hearing Before BPAI (not shown in flow chart)		within 6-12 months after filing of request for oral hearing.
16.	Board Decision The PTO's Board of Patent Appeals and Interferences (BPAI) may:	37 CFR § 41.77 Decisions and other actions by the Board. (a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's	ranges from 1.5 to 3.7 years after issuance of Right of Appeal Notice

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
	<p>(1) affirm the Examiner's decision</p> <p>(2) reverse the Examiner's decision</p> <p>(3) remand the proceeding to Examiner for further consideration</p> <p>(4) provide a new ground of rejection</p>	<p>determination not to make a rejection proposed by the third party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Board of Patent Appeals and Interferences as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.</p> <p>(b) Should the Board reverse the examiner's determination not to make a rejection proposed by a requester, the Board shall set forth in the opinion in support of its decision a new ground of rejection; or should the Board have knowledge of any grounds not raised in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement shall constitute a new ground of rejection of the claim. Any decision which includes a new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.</p>	
17.	<p><i>[If either party appeals to Fed Cir. --]</i></p> <p>Fed. Cir. appeal process</p>	<p>35 U.S.C. §§ 141-145.</p> <p>35 U.S.C. §§ 141-142. When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Director, within such time after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than 60 days after that date.</p>	60 days after Board decision
	Fed. Cir. sets schedule for briefing and argument (not shown in flow chart)		
	Fed. Cir. decision (not shown in flow chart)		Median is 8.9 months from docketing date to disposition date.

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
			See Ex. C.
18.	<i>[If Board decision is not final for judicial review—]</i> Patent Owner amendment and/or showing of new evidence	<p>37 CFR § 41.77(b) ... When the Board makes a new ground of rejection, the owner, within one month from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal proceeding as to the rejected claim:</p> <p>(1) <i>Reopen prosecution</i>. The owner may file a response requesting reopening of prosecution before the examiner. Such a response must be either an amendment of the claims so rejected or new evidence relating to the claims so rejected, or both.</p> <p>(2) Request rehearing. <i>See below</i>.</p>	within 1 month of Board Decision
19.	3 rd Party Requester comments	37 CFR § 41.77(c) . Where the owner has filed a response requesting reopening of prosecution under paragraph (b)(1) of this section, any requester, within one month of the date of service of the owner's response, may once file comments on the response. Such written comments must be limited to the issues raised by the Board's opinion reflecting its decision and the owner's response. Any requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 41.20 (b)(1) and (2), respectively, which must accompany the comments or reply.	within 1 month of service of patent owner's response
20.	Examiner's Determination	37 CFR § 41.77(d) . Following any response by the owner under paragraph (b)(1) of this section and any written comments from a requester under paragraph (c) of this section, the proceeding will be remanded to the examiner. The statement of the Board shall be binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. The examiner will consider any owner response under paragraph (b)(1) of this section and any written comments by a requester under paragraph (c) of this section and issue a determination that the rejection is maintained or has been overcome.	indeterminate (no <i>inter partes</i> reexamination has progressed this far)

	Step in <i>Inter Partes</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
21.	Either party comments & the other party replies	37 CFR § 41.77(e). Within one month of the examiner's determination pursuant to paragraph (d) of this section, the owner or any requester may once submit comments in response to the examiner's determination. Within one month of the date of service of comments in response to the examiner's determination, the owner and any requesters may file a reply to the comments. No requester reply may address the comments of any other requester reply. Any requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under § 41.20(b)(1) and (2), respectively, which must accompany the comments or reply.	comments within 1 month of examiner's determination; <i>plus</i> reply within 1 month of comments
22.	Reexamination proceeding returned to Board for Board Decision	37 CFR § 41.77(f). After submission of any comments and any reply pursuant to paragraph (e) of this section, or after time has expired, the proceeding will be returned to the Board which shall reconsider the matter and issue a new decision. The new decision is deemed to incorporate the earlier decision, except for those portions specifically withdrawn.	returned to Board upon comments and reply, or after expiration of 1-2 months
	[<i>Loop back to Step (16) Board Decision above</i>]	37 CFR §§ 41.77(a), 41.77(b).	<i>see</i> time periods above for BPAI review
23.	[<i>Alternative option after any Board Decision –</i>] Patent Owner and/or 3 rd Party Requester Request for Rehearing	37 CFR § 41.79 Rehearing. (a) Parties to the appeal may file a request for rehearing of the decision within one month of the date of: (1) The original decision of the Board under § 41.77(a), (2) The original § 41.77(b) decision under the provisions of § 41.77(b)(2), (3) The expiration of the time for the owner to take action under § 41.77(b)(2), or (4) The new decision of the Board under § 41.77(f).	within 1 month of Board Decision

24.	Opposing Party's Comments	37 CFR § 41.79(c) Within one month of the date of service of any request for rehearing under paragraph (a) of this section, or any further request for rehearing under paragraph (d) of this section, the owner and all requesters may once file comments in opposition to the request for rehearing or the further request for rehearing. The comments in opposition must be limited to the issues raised in the request for rehearing or the further request for rehearing. (e) The times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.	within 1 month of Request for Rehearing
25.	Board Decision	37 CFR § 41.79(d) If a party to an appeal files a request for rehearing under paragraph (a) of this section, or a further request for rehearing under this section, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.	indeterminate (no <i>inter partes</i> reexamination has progressed this far)
26.	[If Board's decision on rehearing is not a new decision –] Appeal to Fed. Cir. [If Board's decision on rehearing becomes a new decision, loop back to Step (23) Request for Rehearing]	37 § 41.79(d) ... If the Board opinion reflecting its decision on rehearing becomes, in effect, a new decision, and the Board so indicates, then any party to the appeal may, within one month of the new decision, file a further request for rehearing of the new decision under this subsection. Such further request for rehearing must comply with paragraph (b) of this section.	<i>see</i> time periods set forth above for rehearing and/or Fed. Cir. appeal

EXHIBIT E

United States Court of Appeals for the Federal Circuit

Caseload Analysis FY 2007 - FY 2008

	FY 2008	FY 2007	% Change
	12 Months Ending 9/30/2008	12 Months Ending 9/30/2007	
FILINGS			
Total Filings ¹	1459	1545	-5.6%
District Court	459	439	4.6%
Court of Federal Claims	205	188	9.0%
Court of Appeals for Veterans Claims	170	319	-46.7%
Court of International Trade	45	67	-32.8%
Merit Systems Protection Board	419	389	7.7%
Patent & Trademark Office	82	52	57.7%
Boards of Contract Appeals	24	16	50.0%
International Trade Commission	24	38	-36.8%
Department of Veterans Affairs	3	3	0.0%
Office of Compliance	1	4	-75.0%
Writs	27	30	-10.0%
Total Filings per Panel ²	365	386	-5.4%
TERMINATIONS			
Total Terminations ³	1745	1718	1.6%
District Court	478	504	-5.2%
Court of Federal Claims	177	185	-4.3%
Court of Appeals for Veterans Claims	478	387	23.5%
Court of International Trade	64	54	18.5%
Merit Systems Protection Board	420	436	-3.7%
Patent & Trademark Office	60	69	-13.0%
Boards of Contract Appeals	23	29	-20.7%
International Trade Commission	16	18	-11.1%
Department of Veterans Affairs	3	4	-25.0%
Office of Compliance	3	0	300.0%
Writs	23	32	-28.1%
Total Terminations per Panel	436	430	1.4%

United States Court of Appeals for the Federal Circuit
Caseload Analysis FY 2007 - FY 2008
Page 2

	FY 2008 12 Months Ending 9/30/2008	FY 2007 12 Months Ending 9/30/2007	% Change
Total Merits Terminations ⁴	716	797	-10.2%
District Court	208	234	-11.1%
Court of Federal Claims	85	113	-24.8%
Court of Appeals for Veterans Claims	107	78	37.2%
Court of International Trade	37	34	8.8%
Merit Systems Protection Board	228	265	-14.0%
Patent & Trademark Office	27	45	-40.0%
Boards of Contract Appeals	11	22	-50.0%
International Trade Commission	10	3	233.3%
Department of Veterans Affairs	1	2	-50.0%
Office of Compliance	2	0	200.0%
Writs	0	1	-100.0%
Percentage of Merits Terminations Orally Argued: ⁵	61.0%	62.1%	
Dispositions:			
FCR 36 Summary Orders	129	179	-27.9%
Other Non-Precedential Opinions	346	353	-2.0%
Precedential Opinions	241	265	-9.1%
Percentage Non-Precedential Dispositions:	66.3%	66.8%	

CASE EVENT TIMELINES

Median Time: Docketing to Disposition⁶

All Appeals	8.4 months	6.6 months
Merits Dispositions	9.0 months	9.1 months

Median Time: Calendar to Disposition⁷

All Merits Dispositions	1.6 months	1.7 months
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⁴ Merits Terminations: Dispositions by three-judge merits panels or by the court en banc based on the merits of a case after presentation in briefs pursuant to FRAP 28. Excludes cross- and consolidated appeals and dispositions by motions panels.

⁵ Percentage of Merits Terminations Orally Argued: Most appeals where the parties are represented by counsel are argued orally. Pro se appeals are not argued orally.

⁶ Median Time Docketing to Disposition: Median number of months between docketing and disposition for appeals terminated during the 12-month review period.

⁷ Median Time Calendar to Disposition: Median number of months between oral argument or submission on the briefs and disposition for appeals terminated during the 12-month review period.

United States Court of Appeals for the Federal Circuit

Median Time to Disposition in Cases Terminated After Hearing or Submission

Docketing Date² to Disposition Date, in Months

	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY 07</u>
District Court	11.7	12.8	13.3	12.3	11.3	11.7	11.6	11.5	11.6
Court of Federal Claims	10.6	11.4	12.0	11.4	9.8	11.0	11.2	10.0	10.0
Court of International Trade	12.6	13.1	14.5	14.7	11.2	12.0	11.5	11.7	11.9
Court of Appeals Veterans Claims	9.1	10.6	11.3	12.9	10.6	10.0	9.9	8.4	8.4
Board of Contract Appeals	12.1	13.1	12.0	11.3	12.6	9.7	10.5	11.7	10.4
Department of Veterans Affairs	n/a	15.0	19.9	11.1	13.8	n/a	14.4	13.7	11.3
International Trade Commission	11.9	24.3	6.8	n/a	17.1	16.0	16.4	15.6	13.6
Merit Systems Protection Board	6.6	7.2	7.5	7.2	7.6	6.9	7.5	6.5	6.4
Office of Compliance	12.5	7.2	10.2	n/a	19.6	10.1	13.3	14.0	n/a
Patent and Trademark Office	9.3	10.0	10.6	10.7	9.5	9.6	10.3	10.0	9.6
Overall Median per Fiscal Year	9.8	10.1	11.2	10.5	9.6	10.0	9.9	9.3	9.1

¹ Excludes cross and consolidated appeals, writs, and OPM petitions

² Calculated from Date of Docketing or Date of Reinstatement, whichever is later

EXHIBIT F

7/16/2009

Inter Parties Reexam Statistics

Control No.	Filing Date	Patent No.	Determination	Determination Date	Initial OA	Action Closing Prosecution	Right of Appeal Notice	Examiner's Answer	BPAI Decision	Decision Outcome	Terminated	Notice of Intent to Issue Certificate	Certificate
95/000,001	7/27/2001	6232427	Ordered	10/17/2001	10/17/2001							11/6/2003	3/2/2004
95/000,002	12/17/2001	6177102	Ordered	3/6/2002	3/6/2002	6/2/2003	6/22/2004					2/8/2005	7/5/2005
95/000,003	1/8/2002	6319526	Ordered	4/4/2002	4/4/2002	6/23/2007	4/1/2008	2/23/2009					
95/000,004	6/13/2002	6352486	Ordered	7/26/2002	7/26/2002							12/20/2002	9/2/2003
95/000,005	7/15/2002	6328260	Ordered	9/13/2002	1/16/2004	2/8/2005	8/10/2005	4/7/2009		Examiner Affirmed in Part			
95/000,006	12/4/2002	6357595	Ordered	2/6/2003	2/6/2003	10/7/2003	3/2/2004	12/9/2004	3/26/2007				
95/000,007	12/16/2002	6339455	Ordered	3/12/2003	3/12/2003	9/30/2005	4/17/2008						
95/000,008	12/20/2002	6428113	Ordered	2/25/2003	2/25/2003	12/17/2003	9/22/2005						
95/000,009	1/8/2003	6399670	Ordered	4/7/2003		4/7/2003	7/21/2003	6/26/2005	3/27/2007	Examiner Affirmed in Part		8/20/2008	4/7/2009
95/000,010	3/12/2003	6375169	Ordered	6/11/2003	6/11/2003	5/25/2004	10/4/2005	9/27/2007	3/27/2009	Examiner Reversed		7/14/2009	
95/000,012	5/8/2003	6502477	Ordered	7/22/2003	7/22/2003	5/26/2004	2/17/2006					11/5/2008	
95/000,013	5/15/2003	6440481	Ordered	7/29/2003	7/29/2003	7/19/2005	2/15/2006					5/9/2007	7/17/2007
95/000,014	5/16/2003	6466690	Ordered	7/18/2003	7/18/2003	3/6/2006	1/31/2008					8/28/2008	11/18/2008
95/000,015	5/20/2003	6450477	Ordered	7/29/2003	7/29/2003	4/12/2005	9/12/2005	5/2/2007	12/4/2008	Examiner Reversed			
95/000,017	5/20/2003	6250605	Ordered	7/29/2003	7/29/2003	4/12/2005	9/12/2005	5/2/2007	12/4/2008	Examiner Affirmed in Part		3/24/2008	6/3/2008
95/000,016	5/21/2003	6376217	Ordered	8/8/2003	8/8/2003	12/12/2005	10/5/2007						
95/000,020	5/29/2003	6317592	Ordered	8/26/2003	9/28/2005	2/1/2006	12/8/2006	8/24/2007					
95/000,018	5/30/2003	6386642	Ordered	8/20/2003	8/20/2003	11/24/2004	9/14/2005	9/28/2007					
95/000,021	6/6/2003	6260984	Ordered	8/22/2003	8/22/2003								
95/000,022	6/6/2003	6318873	Ordered	8/22/2003	8/22/2003							8/6/2008	11/4/2008
95/000,023	7/17/2003	6354304	Ordered	10/8/2003	10/8/2003	9/26/2005	11/13/2006					8/6/2008	11/4/2008
95/000,024	7/21/2003	6524031	Ordered	10/16/2003	10/16/2003	5/17/2005	11/25/2005					4/14/2008	7/22/2008
95/000,025	8/4/2003	6293319	Ordered	10/15/2003	6/16/2004	9/15/2005	1/24/2007					12/5/2007	3/18/2008
95/000,026	9/3/2003	6571920	Ordered	11/24/2003	11/24/2003	5/17/2005	9/15/2005					4/26/2006	9/26/2006
95/000,027	10/10/2003	6577102	Ordered	1/6/2004	1/6/2004	5/10/2006						9/28/2007	1/1/2008
95/000,028	11/13/2003	6580501	Ordered	1/20/2004	1/20/2004	2/3/2005	10/20/2005					6/27/2007	7/1/2008
95/000,029	11/14/2003	6624263	Ordered	1/21/2004	1/21/2004	9/21/2006	4/19/2007						
95/000,030	12/3/2003	6508393	Ordered	2/24/2004	2/24/2004	3/17/2005	9/30/2005	7/18/2006	2/6/2008	Examiner Affirmed in Part		9/3/2008	11/25/2008
95/000,031	12/10/2003	6296304	Ordered	3/4/2004	5/12/2004	4/19/2006						6/2/2009	
95/000,032	12/31/2003	6330476	Ordered	3/23/2004	3/23/2004	9/4/2007	7/16/2008						
95/000,033	1/6/2004	6644184	Ordered	4/5/2004	7/8/2004								
95/000,034	2/9/2004	6467247	Ordered	5/4/2004	5/4/2004	12/22/2004	11/2/2007	7/10/2008					
95/000,035	2/9/2004	6471127	Ordered	5/4/2004	5/4/2004	2/8/2006	6/6/2007	2/29/2008	6/30/2009	Rejections Affirmed		3/30/2009	6/30/2009
95/000,036	2/20/2004	6656011	Ordered	5/19/2004	5/19/2004	5/20/2005	9/19/2008					3/22/2006	8/15/2006
95/000,037	2/25/2004	6444872	Ordered	5/19/2004	5/19/2004								
95/000,038	2/27/2004	6527941	Ordered	5/4/2004	5/4/2004	12/14/2005	4/6/2006	2/20/2007	6/18/2009	New Ground of Rejection Reversed		1/29/2009	4/21/2009
95/000,039	4/16/2004	6588390	Ordered	7/13/2004	7/13/2004	3/17/2008	10/20/2008						

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Inter Partes Reexam Statistics

Control No.	Filing Date	Patent No.	Determination	Determination Date	Initial OA	Action Closing Prosecution	Right of Appeal Notice	Examiner's Answer	BPAI Decision	Decision Outcome	Terminated	Notice of Intent to Issue Certificate	Certificate
95/000.040	4/21/2004	6623378	Ordered	7/15/2004	7/15/2004	1/24/2007	9/20/2007					11/26/2007	3/11/2008
95/000.041	5/3/2004	6520297	Ordered	8/2/2004	8/2/2004							1/10/2006	6/19/2007
95/000.042	5/14/2004	6605751	Ordered	8/4/2004	8/4/2004	8/19/2008	12/9/2008					3/25/2009	6/16/2009
95/000.043	5/26/2004	6721743	Ordered	7/14/2004	7/14/2004	4/11/2005	1/12/2006	12/17/2008					
95/000.044	6/3/2004	6698567	Ordered	7/30/2004	7/30/2004	4/7/2006	3/13/2008			Examiner Reversed		8/25/2008	12/2/2008
95/000.045	6/4/2004	6681652	Ordered	8/25/2004	8/25/2004	2/7/2006	5/24/2006	3/13/2008	4/30/2009				
95/000.046	6/5/2004	6490737	Ordered	8/31/2004	8/31/2004	9/27/2007	5/4/2009						
95/000.047	6/24/2004	6520401	Ordered	9/16/2004	9/16/2004	8/2/2005	11/1/2005					3/3/2006	8/22/2006
95/000.048	8/23/2004	6343901	Ordered	11/18/2004	11/18/2004	9/27/2007	2/26/2008	8/21/2008				12/5/2008	2/24/2009
95/000.049	8/27/2004	6651618	Ordered	11/23/2004	11/23/2004	9/22/2005	9/25/2007					3/10/2009	6/2/2009
95/000.050	9/17/2004	6688280	Ordered	12/10/2004	12/10/2004	9/22/2005							
95/000.051	9/23/2004	6518733	Ordered	12/8/2004	12/8/2004	1/28/2007	12/19/2008					6/4/2009	5/5/2009
95/000.052	9/23/2004	6636021	Ordered	12/8/2004	12/8/2004	1/28/2007	11/10/2008					1/26/2009	
95/000.053	9/30/2004	6425407	Ordered	12/14/2004	12/14/2004	12/22/2008	7/14/2009						
95/000.054	10/13/2004	6303978	Ordered	1/11/2005	6/29/2005	12/22/2008							
95/000.056	10/13/2004	6641334	Ordered	12/16/2004	6/13/2005	2/23/2007	7/8/2006					2/4/2008	5/20/2008
95/000.055	10/14/2004	6381942	Ordered	12/21/2004	12/21/2004	6/3/2005	10/1/2007					10/1/2007	4/15/2008
95/000.057	10/18/2004	6769440	Ordered	1/12/2005	9/28/2006	9/12/2007	1/21/2008					1/26/2009	4/28/2009
95/000.058	10/28/2004	6551415	Ordered	1/12/2005	9/28/2006	4/11/2007	9/19/2007					1/26/2009	4/18/2009
95/000.059	11/2/2004	6616382	Ordered	1/28/2005	1/28/2005							2/5/2008	5/6/2008
95/000.060	11/15/2004	6679619	Ordered	2/3/2005	2/3/2005	1/16/2009	6/12/2009					3/26/2009	6/9/2009
95/000.061	12/1/2004	6575260	Ordered	2/28/2005	3/9/2006	9/25/2007	1/8/2009						
95/000.062	12/3/2004	6653104	Ordered	2/28/2005	3/17/2005	12/5/2008							
95/000.063	12/3/2004	6573875	Ordered	2/28/2005	5/3/2005	1/23/2009							
95/000.069	12/3/2004	6789673	Ordered	2/28/2005	4/21/2005	2/2/2006	11/17/2006	9/5/2008					
95/000.064	12/6/2004	6767487	Ordered	3/2/2005	3/2/2005	9/12/2005	4/17/2006	11/19/2007					
95/000.065	12/8/2004	6155906	Ordered	3/7/2005	3/15/2005	1/23/2009							
95/000.066	12/17/2004	6789673	Ordered	2/28/2005	4/21/2005	2/2/2006	11/17/2006	9/5/2008					
95/000.067	12/20/2004	6554446	Ordered	3/21/2005	3/21/2005	5/15/2009				Examiner Affirmed			
95/000.068	12/27/2004	6531537	Ordered	3/8/2005	3/8/2005	9/29/2006	9/18/2007	4/11/2008	3/31/2009			6/8/2009	
95/000.070	1/7/2005	6553611	Ordered	3/15/2005	3/15/2005								
95/000.071	1/26/2005	6330941	Ordered	4/5/2005	4/5/2005	6/7/2006	9/25/2007	9/29/2008					
95/000.072	1/26/2005	6523680	Ordered	4/18/2005	4/18/2005	6/7/2006	9/25/2007	9/30/2008					
95/000.073	1/31/2005	6720005	Ordered	4/21/2005	4/21/2005	7/18/2006	7/16/2007	6/25/2008					
95/000.074	1/31/2005	6680306	Ordered	4/12/2005	4/12/2005								
95/000.075	2/1/2005	6718359	Ordered	4/19/2005	4/19/2005	9/26/2005	2/3/2006						
95/000.076	2/17/2005	6578736	Ordered	4/5/2005	5/26/2006	9/17/2007	2/25/2008	11/7/2008					
95/000.077	2/18/2005	6715639	Ordered	4/5/2005	5/26/2006	9/17/2007	2/25/2008	1/16/2009					
95/000.078	2/23/2005	6671223	Ordered	5/19/2005	5/19/2005	10/2/2007	9/29/2008						
95/000.079	2/28/2005	6444283	Ordered	5/11/2005	5/11/2005	11/9/2005	5/8/2009					2/18/2009	5/12/2009
95/000.080	3/1/2005	6644120	Ordered	5/11/2005	5/11/2005	9/5/2008	3/9/2009						
95/000.081	3/3/2005	6507956	Ordered	5/18/2005	9/20/2005	1/4/2007						4/3/2009	7/14/2009
95/000.082	3/7/2005	D471672	Denied	5/11/2005									
95/000.083	3/7/2005	D478188	Denied	5/11/2005									

7/16/2009

Inter Partes Reexam Statistics

Control No.	Filing Date	Patent No.	Determination	Determination Date	Initial OA	Action Closing Prosecution	Right of Appeal Notice	Examiner's Answer	BPAJ Decision	Decision Outcome	Terminated	Notice of Intent to Issue Certificate	Certificate
95/000,084	3/21/2005	6543505	Ordered	6/3/2005	6/3/2005	7/2/2007	3/24/2008	8/16/2008					
95/000,085	3/29/2005	6872152	Ordered	6/3/2005	6/3/2005	1/25/2007	8/17/2007					2/13/2008	5/27/2008
95/000,086	4/1/2005	D467270	Ordered	6/7/2005	6/7/2005								
95/000,087	4/5/2005	6528666	Ordered	6/10/2005	6/10/2005	11/14/2005	4/20/2009						
95/000,088	4/13/2005	6559866	Ordered	6/1/2005	6/1/2005	9/25/2007	9/23/2008					3/2/2009	5/19/2009
95/000,089	4/15/2005	6643765	Ordered	6/1/2005	6/1/2005	3/2/2006	1/5/2008					5/27/2009	
95/000,090	5/2/2005	6298715	Ordered	7/18/2005	7/18/2005	7/2/2007	1/26/2009					12/3/2008	2/17/2009
95/000,091	5/2/2005	6377066	Ordered	7/29/2005	7/29/2005								
95/000,092	5/5/2005	6611662	Ordered	6/29/2005	6/29/2005	3/4/2008					6/5/2007		
95/000,093	5/17/2005	6424333	Ordered	8/17/2005							6/5/2007		
95/000,094	5/19/2005	6275213	Ordered	8/17/2005									
95/000,095	5/23/2005	6689336	Ordered	7/12/2005	7/12/2005							10/25/2005	8/1/2006
95/000,097	6/6/2005	6864766	Ordered	9/1/2005		10/25/2005	2/17/2006	8/21/2008				2/6/2009	
95/000,096	6/10/2005	6723412	Ordered	8/16/2005	8/16/2005	2/2/2006	9/30/2008						
95/000,098	6/10/2005	6729932	Ordered	7/29/2005	7/29/2005	12/19/2005	2/15/2006	10/18/2007					
95/000,099	6/13/2005	6565088	Ordered	9/2/2005	9/2/2005	2/5/2009							
95/000,100	6/28/2005	6725356	Ordered	9/8/2005	9/8/2005	3/19/2009	7/11/2009						
95/000,101	6/30/2005	6695135	Denied	9/22/2005									
95/000,102	7/28/2005	6341218	Ordered	9/14/2005	9/14/2005	3/20/2009				Allowance Affirmed			
95/000,103	8/1/2005	6871356	Ordered	9/29/2005		9/29/2005	2/17/2006	11/20/2007	6/24/2009				
95/000,104	8/12/2005	6612713	Ordered	9/28/2005	9/28/2005								
95/000,105	8/17/2005	6387499	Ordered	10/18/2005	10/18/2005	8/7/2006	9/29/2008						
95/000,106	8/22/2005	6857712	Denied	11/16/2006									
95/000,107	8/22/2005	6547873	Denied	11/9/2005									
95/000,108	8/30/2005	6936104	Denied	10/20/2005									
95/000,109	9/6/2005	6418532	Ordered	11/21/2005	11/21/2005	4/12/2006	2/23/2007					5/17/2007	9/30/2008
95/000,110	9/8/2005	6833012	Ordered	11/17/2005	11/17/2005	6/28/2006	3/28/2008					8/4/2008	11/11/2008
95/000,111	9/16/2005	6116477	Ordered	11/22/2005	11/22/2005	4/21/2006	6/12/2007					10/9/2007	12/25/2007
95/000,112	9/20/2005	6530807	Ordered	11/17/2005	12/13/2005	1/8/2009							
95/000,113	10/19/2005	6676290	Ordered	12/21/2005	12/21/2005	11/21/2007	9/26/2008					2/13/2009	4/28/2009
95/000,114	11/4/2005	6712352	Ordered	1/23/2006	1/23/2006	8/3/2007	3/14/2008	6/10/2009				4/4/2008	6/17/2008
95/000,116	11/23/2005	6553794	Ordered	1/25/2006	1/25/2006	5/22/2007	9/20/2007						
95/000,115	11/28/2005	6523333	Ordered	1/19/2006	1/19/2006	5/14/2009						7/2/2007	1/22/2008
95/000,117	12/23/2005	D504126	Ordered	3/3/2006	3/3/2006								
95/000,118	1/10/2006	6966316	Ordered	3/20/2006	3/20/2006	11/23/2007	4/11/2008	4/17/2009					
95/000,119	1/13/2006	6767247	Ordered	3/9/2006	6/8/2006	2/12/2008	9/26/2008						
95/000,120	1/17/2006	6210293	Ordered	4/7/2006	2/27/2007	9/23/2008							
95/000,121	1/17/2006	6503156	Ordered	4/7/2006	2/27/2007	9/25/2008							
95/000,122	1/17/2006	6506130	Ordered	4/6/2006	1/30/2007	3/4/2008	6/24/2008						
95/000,123	1/17/2006	6595873	Ordered	4/6/2006	1/30/2007	6/25/2008	5/1/2009						
95/000,124	1/23/2006	6838618	Ordered	4/13/2006	8/11/2006	6/19/2009							
95/000,125	1/25/2006	6622355	Ordered	4/6/2006	4/6/2006	2/14/2009							
95/000,126	1/25/2006	6441496	Ordered	3/20/2006	3/20/2006	11/5/2007	9/29/2008						
95/000,127	1/30/2006	6662956	Ordered	3/24/2006	3/24/2006	2/15/2008							
95/000,128	2/1/2006	6840088	Ordered	4/14/2006	4/14/2006								

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95/000,130	2/7/2006	6672059	Ordered	4/4/2006	4/4/2006	3/7/2008						8/28/2008	11/18/2008
95/000,129	2/10/2006	6377179	Ordered	4/13/2006	4/13/2006							2/23/2009	
95/000,131	2/14/2006	6614729	Ordered	3/31/2006	3/31/2006							3/6/2007	9/11/2007
95/000,132	3/3/2006	6808888	Ordered	4/24/2006	4/24/2006	11/6/2006	4/9/2007					8/16/2007	4/29/2008
95/000,133	3/9/2006	6685585	Ordered	5/12/2006	5/12/2006	8/9/2007	5/27/2008					3/31/2009	7/14/2009
95/000,134	3/10/2006	6769436	Ordered	5/2/2006	5/2/2006	4/18/2007							
95/000,135	3/13/2006	6951211	Ordered	5/26/2006	11/14/2006	1/5/2009							
95/000,136	3/14/2006	6299793	Ordered	5/5/2006	5/5/2006	2/9/2007	5/10/2008	4/15/2009					
95/000,137	3/20/2006	6830358	Ordered	6/7/2006	6/7/2006	9/30/2008	5/19/2009						
95/000,138	3/23/2006	6645742	Ordered	5/22/2006	5/22/2006	1/26/2007	11/29/2007	6/3/2008					
95/000,139	3/29/2006	6735874	Ordered	6/19/2006	6/19/2006	3/28/2008	1/8/2009						
95/000,140	3/30/2006	6757574	Ordered	6/1/2006	7/3/2006								
95/000,141	4/3/2006	6427811	Denied	6/22/2006									
95/000,142	4/10/2006	6629840	Ordered	6/13/2006	6/13/2006								
95/000,143	4/13/2006	7022332	Ordered	6/12/2006	6/12/2006	4/27/2007	1/16/2008					8/6/2008	12/2/2008
95/000,144	4/14/2006	7001951	Ordered	6/16/2006	6/16/2006	4/11/2007	6/23/2008						
95/000,145	4/24/2006	6501966	Ordered	6/21/2006	6/21/2006	2/5/2008	1/26/2009					5/27/2009	
95/000,152	5/10/2006	6673604	Ordered	7/27/2006	8/31/2006	2/13/2008						12/30/2008	3/24/2009
95/000,171	5/19/2006	6594565	Ordered	10/16/2006	10/16/2006	10/22/2007							
95/000,146	6/19/2006	6838235	Ordered	8/30/2006	8/30/2006	3/8/2007	11/19/2007	6/10/2008					
95/000,150	6/26/2006	6846715	Ordered	8/30/2006	8/30/2006	11/21/2008	3/20/2009					6/2/2009	
95/000,153	7/17/2006	6753013	Ordered	9/13/2006	9/13/2006	9/5/2007	7/17/2008						
95/000,154	7/17/2006	7029913	Ordered	9/29/2006	3/30/2007	2/25/2008	6/20/2008					1/27/2009	4/14/2009
95/000,172	7/18/2006	6685469	Ordered	10/13/2006	5/14/2007	9/24/2007	9/3/2008						
95/000,156	7/19/2006	6598564	Ordered	10/3/2006	10/3/2006	4/14/2008						9/12/2008	1/13/2009
95/000,158	7/21/2006	6518644	Ordered	10/6/2006	10/6/2006	3/21/2008							
95/000,159	7/27/2006	D487627	Denied	10/24/2006									
95/000,160	7/28/2006	6221392	Ordered	9/13/2006	9/13/2006	9/18/2007	4/10/2008	4/1/2009					
95/000,161	7/28/2006	6543447	Ordered	10/25/2006	5/4/2007	3/23/2009	6/5/2009						
95/000,168	7/31/2006	7048472	Ordered	10/27/2006									
95/000,176	9/6/2006	6890906	Ordered	11/15/2006	11/15/2006								
95/000,163	9/18/2006	6428371	Ordered	12/8/2006									
95/000,179	9/18/2006	6405669	Ordered	12/8/2006	6/20/2007	3/4/2008	6/23/2008				9/25/2008		
95/000,165	9/21/2006	6550701	Ordered	11/1/2006	5/2/2008							2/25/2008	7/15/2008
95/000,180	9/28/2006	6750130	Ordered	12/7/2006	12/7/2007	5/1/2008	11/21/2008					5/22/2007	9/25/2007
95/000,183	10/4/2006	6182184	Ordered	12/26/2006	7/3/2008							9/29/2008	1/6/2009
95/000,193	10/17/2006	6697476	Ordered	1/10/2007	4/2/2008							3/10/2009	5/26/2009
95/000,197	11/22/2006	6366522	Ordered	2/7/2007	5/16/2008						2/11/2009		
95/000,198	11/22/2006	6633187	Ordered	2/3/2007	3/1/2007	10/22/2008	1/23/2009	6/12/2009					
95/000,200	11/29/2006	6994585	Ordered	2/22/2007	3/26/2007	4/15/2008							
95/000,199	12/1/2006	6988138	Ordered	2/24/2007	3/25/2008								
95/000,201	12/8/2006	6763345	Ordered	3/1/2007	10/3/2007	1/5/2009	4/14/2009					5/29/2009	
95/000,206	12/13/2006	6753035	Ordered	3/8/2007	5/20/2009							11/5/2007	2/12/2008
95/000,208	12/20/2006	6566285	Ordered	3/12/2007	3/12/2007								
95/000,210	1/3/2007	7156100	Terminated								6/12/2007		
95/000,211	1/8/2007	6961773	Ordered	3/23/2007	9/15/2008								

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95/000,212	1/9/2007	7089224	Ordered	3/21/2007	5/29/2007								
95/000,213	1/9/2007	7081542	Ordered	3/30/2007	5/23/2007							2/13/2008	5/13/2008
95/000,218	1/23/2007	RE39465	Ordered	4/12/2007	4/12/2007	2/29/2008	7/17/2008						
95/000,227	2/9/2007	6433419	Ordered	5/4/2007	6/5/2007	2/19/2008	9/17/2008						
95/000,228	2/12/2007	6979117	Ordered	5/7/2007	5/7/2007								
95/000,229	2/15/2007	6465893	Ordered	5/4/2007	5/4/2007	2/15/2008	6/22/2009						
95/000,235	2/27/2007	6919001	Ordered	4/20/2007	4/20/2007								
95/000,237	3/6/2007	7105091	Ordered	5/7/2007	5/7/2007	4/24/2008	6/5/2009						
95/000,241	3/20/2007	6928852	Ordered	4/27/2007	4/23/2008	8/7/2008	12/5/2008					2/23/2009	5/26/2009
95/000,246	3/22/2007	6756258	Ordered	6/5/2007	8/13/2007	5/14/2008	7/17/2008					9/23/2008	1/20/2009
95/000,247	3/30/2007	6432133	Ordered	4/24/2007	3/3/2008								
95/000,253	4/11/2007	7189110	Ordered	7/6/2007	12/4/2007								
95/000,261	5/7/2007	6590220	Ordered	7/20/2007	11/5/2007	9/19/2008	3/24/2009						
95/000,258	5/8/2007	7195517	Ordered	8/3/2007	8/3/2007	9/19/2008	4/6/2009						
95/000,259	5/10/2007	6850464	Ordered	7/16/2007	7/16/2007	9/18/2008							
95/000,262	5/10/2007	6554861	Ordered	7/31/2007	3/17/2008								
95/000,263	5/17/2007	7067556	Ordered	8/3/2007	8/3/2007								
95/000,265	5/29/2007	7222614	Ordered	8/29/2007	8/29/2007	4/9/2008	10/1/2008					12/30/2008	3/3/2009
95/000,267	6/5/2007	7056954	Ordered	8/22/2007	11/20/2007	6/24/2008	12/1/2008						
95/000,257	6/8/2007	6430668	Ordered	8/16/2007	8/16/2007	6/24/2008	11/28/2008					12/5/2008	3/3/2009
95/000,275	6/18/2007	6813699	Ordered	8/22/2007	11/19/2007	2/5/2008	6/24/2008						
95/000,268	6/19/2007	7026164	Ordered	8/16/2007	12/22/2008								
95/000,269	6/21/2007	6829473	Ordered	8/16/2007	8/16/2007								
95/000,271	6/25/2007	6447485	Ordered	9/21/2007	9/21/2007								
95/000,270	6/26/2007	7131819	Ordered	8/17/2007	5/19/2008								
95/000,272	6/27/2007	6630645	Ordered	8/2/2007	8/2/2007	5/19/2008							
95/000,276	7/9/2007	6924264	Ordered	10/3/2007	1/17/2008	3/5/2009							
95/000,273	7/10/2007	7178702	Ordered	9/26/2007	9/26/2007	11/19/2008	2/24/2009					4/24/2009	
95/000,274	7/11/2007	6707264	Ordered	8/8/2007	6/5/2008	2/10/2009							
95/000,278	7/12/2007	7065417	Ordered	9/28/2007	11/8/2007								
95/000,277	7/17/2007	6431983	Ordered	10/1/2007	2/29/2008	3/9/2009							
95/000,279	7/17/2007	6832958	Ordered	9/21/2007	9/21/2007	9/21/2007	4/17/2008						
95/000,280	7/17/2007	6620046	Ordered	9/14/2007	9/14/2007	9/26/2008	2/14/2009						
95/000,281	8/1/2007	6721178	Terminated								10/1/2007		
95/000,282	8/2/2007	6514531	Ordered	11/1/2007	4/18/2008								
95/000,295	8/3/2007	6687745	Ordered	10/26/2007	9/15/2008								
95/000,284	8/6/2007	6733241	Ordered	10/16/2007	10/16/2007	1/16/2009							
95/000,283	8/7/2007	6501234	Ordered	10/26/2007	6/24/2008	6/5/2009							
95/000,289	8/21/2007	6974084	Ordered	11/9/2007	10/26/2007	3/11/2009							
95/000,293	8/21/2007	6947702	Ordered	10/26/2007	10/26/2007	2/4/2009							
95/000,300	8/31/2007	7109042	Ordered	11/27/2007	2/7/2008	5/14/2009							
95/000,292	9/4/2007	6910601	Ordered	11/14/2007	11/14/2007	2/23/2009							
95/000,302	9/17/2007	6605308	Ordered	12/10/2007	12/10/2007	6/16/2008							
95/001,005	9/19/2007	6905486	Ordered	12/10/2007	12/10/2007	12/23/2008							
95/001,006	9/19/2007	6853084	Ordered	11/5/2007	11/5/2007								
95/000,303	9/21/2007	6857712	Denied	12/14/2007									

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95/001,008	10/1/2007	6715020	Ordered	12/19/2007	2/15/2008	12/22/2008							
95/000,304	10/5/2007	6640872	Ordered	12/14/2007	12/14/2007	3/13/2009							
95/001,011	10/11/2007	6325414	Ordered	1/7/2008	5/6/2008								
95/001,012	10/11/2007	6942248	Ordered	1/9/2008	1/9/2008	1/7/2009	5/28/2009						
95/001,013	10/11/2007	6697295	Ordered	1/9/2008	8/25/2008	2/13/2009							
95/000,307	10/14/2007	7281527	Ordered	12/4/2007	12/4/2007	4/3/2009							
95/000,309	10/19/2007	D484637	Ordered	1/16/2008	1/16/2008								
95/000,308	10/24/2007	6399002	Ordered	12/10/2007	12/10/2007	1/8/2009							
95/000,310	10/24/2007	6830766	Ordered	1/22/2008	7/23/2008	3/12/2009					1/30/2009	7/3/2008	10/28/2008
95/000,311	10/24/2007	6827955	Ordered	1/22/2008	7/23/2008	3/12/2009	7/13/2009						
95/000,312	10/24/2007	7054547	Ordered	1/8/2008	3/21/2008	4/2/2009							
95/000,313	10/31/2007	6925469	Ordered	1/29/2008	2/13/2008	3/19/2009							
95/000,314	11/6/2007	D499385	Ordered	2/5/2008	3/13/2008	1/7/2009							
95/000,315	11/6/2007	D491538	Denied	2/5/2008									
95/000,316	11/6/2007	D490784	Denied	2/5/2008									
95/000,317	11/6/2007	D503388	Ordered	2/5/2008	3/13/2008	1/9/2009							
95/001,016	11/16/2007	7208170	Ordered	1/24/2008	1/24/2008	6/25/2008	1/12/2009						
95/000,320	11/21/2007	6870820	Ordered	12/28/2007	12/28/2007	10/16/2008	2/13/2009					5/8/2009	
95/000,321	11/21/2007	6785370	Denied	2/28/2008									
95/000,322	11/21/2007	6728345	Denied	2/11/2008									
95/000,323	11/21/2007	7010109	Ordered	2/12/2008	2/12/2008	11/10/2008	2/13/2009					4/30/2009	
95/000,326	12/4/2007	7214017	Ordered	2/27/2008	2/27/2008	3/9/2009							
95/001,017	12/7/2007	7108689	Ordered	2/8/2008	2/8/2008	3/16/2009						6/9/2009	
95/001,018	12/7/2007	6928479	Ordered	3/4/2008	6/16/2008								
95/000,327	12/11/2007	7281842	Denied	3/3/2008									
95/000,329	12/17/2007	7278758	Ordered	2/12/2008	6/30/2008	3/27/2009							
95/000,330	12/17/2007	7236821	Ordered	1/30/2008	1/30/2008	4/17/2009							
95/001,024	12/31/2007	6853714	Ordered	3/14/2008	9/5/2008	3/26/2009	7/6/2009						
95/000,337	1/4/2008	6805891	Ordered	2/29/2008	3/17/2008								
95/000,332	1/8/2008	7228383	Ordered	3/11/2008	2/6/2009								
95/000,334	1/11/2008	6915823	Ordered	2/27/2008		2/27/2008	9/5/2008						
95/000,335	1/11/2008	6877530	Ordered	3/7/2008	3/7/2008								
95/000,336	1/11/2008	7240699	Ordered	3/11/2008	3/11/2008	10/15/2008	2/18/2009					4/23/2009	7/14/2009
95/000,338	1/15/2008	6922181	Ordered	4/2/2008	4/4/2008	3/27/2009	6/17/2009						
95/000,339	1/18/2008	7281842	Ordered	3/28/2008	3/28/2008	4/10/2009							
95/000,340	1/30/2008	7260447	Ordered	3/21/2008	3/21/2008	3/30/2009							
95/001,028	1/30/2008	6991298	Ordered	2/27/2008	2/27/2008	6/5/2009							
95/000,341	2/1/2008	6833016	Ordered	4/11/2008	4/11/2008								
95/000,342	2/1/2008	7117902	Ordered	3/11/2008	10/15/2008		2/18/2009					4/24/2009	7/14/2009
95/000,343	2/1/2008	7127464	Ordered	4/17/2008	12/4/2008	4/27/2009							
95/000,344	2/6/2008	7283519	Ordered	4/16/2008	6/13/2008	3/30/2009	7/2/2009						
95/000,345	2/11/2008	7017622	Ordered	4/23/2008	4/23/2008								
95/000,346	2/13/2008	6234853	Ordered	4/16/2008	5/2/2008								
95/000,347	2/19/2008	7113152	Ordered	5/2/2008	12/19/2008								
95/000,348	2/19/2008	7113152	Ordered	5/10/2008	12/19/2008								
95/000,349	2/20/2008	6873065	Ordered	4/29/2008	7/11/2008								

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95/000,351	2/21/2008	7096242	Ordered	4/29/2008	5/27/2008	2/20/2009							
95/000,352	2/21/2008	6763364	Ordered	5/2/2008	5/27/2008	2/20/2009							
95/000,350	2/25/2008	7173922	Ordered	5/15/2008	5/16/2008								
95/001,033	2/27/2008	7310923	Ordered	4/17/2008	4/17/2008								
95/000,353	2/29/2008	6985748	Ordered	5/20/2008									
95/000,355	3/6/2008	6722674	Ordered	5/2/2008	5/2/2008	3/6/2009	5/21/2009						
95/000,356	3/6/2008	7159280	Ordered	5/8/2008	5/8/2008								
95/000,354	3/7/2008	6763345	Ordered After	5/14/2008	9/4/2008	1/5/2009	4/14/2009					5/29/2009	
95/000,357	3/11/2008	7210744	Review	9/18/2008		1/7/2009	5/11/2009						
95/000,358	3/14/2008	6615485	Ordered	6/12/2008	6/12/2008	3/18/2009							
95/000,359	3/19/2008	7121419	Ordered	4/17/2008	4/17/2008	3/4/2009						6/5/2009	
95/001,035	4/2/2008	6458681	Ordered	6/6/2008	6/6/2008								
95/001,036	4/2/2008	7139404	Ordered	6/12/2008	3/11/2009								
95/000,361	4/7/2008	7004852	Ordered	6/19/2008	6/19/2008								
95/000,362	4/7/2008	7189169	Ordered	6/19/2008	6/19/2008								
95/001,037	4/10/2008	7162458	Ordered	6/20/2008	6/20/2008								
95/001,038	4/17/2008	7276029	Ordered	6/17/2008	6/17/2008	2/14/2009	6/19/2009						
95/001,039	4/17/2008	6931327	Ordered	5/29/2008	5/29/2008								
95/000,363	4/28/2008	6203754	Ordered	6/23/2008	6/23/2008	3/20/2009	6/26/2009						
95/000,365	4/29/2008	6696017	Ordered	7/17/2008	7/17/2008	5/4/2009							
95/001,041	4/29/2008	7301290	Ordered	6/23/2008	6/23/2008	12/4/2008	6/4/2009						
95/001,042	4/29/2008	6926609	Ordered	6/12/2008	7/8/2009								
95/000,366	5/5/2008	7158861	Ordered	6/20/2008	6/20/2008	2/23/2009	6/19/2009						
95/001,043	5/8/2008	7117515	Ordered	7/24/2008	9/24/2008							1/16/2009	3/24/2009
95/000,367	5/9/2008	6306943	Ordered	7/2/2008	7/2/2008								
95/000,368	5/14/2008	6748320	Ordered	7/21/2008	7/21/2008	2/11/2009	6/4/2009						
95/000,369	5/14/2008	6904359	Ordered	7/22/2008	7/22/2008	2/20/2009							
95/000,370	5/21/2008	RE40216	Ordered	7/14/2008	7/14/2008	3/4/2009	6/29/2009						
95/001,047	5/30/2008	7069235	Ordered	7/12/2008	7/12/2008								
95/001,048	5/30/2008	7216651	Ordered	8/4/2008	2/12/2009								
95/000,376	6/3/2008	6805891	Ordered	8/13/2008									
95/001,049	6/3/2008	7231363	Ordered	8/22/2008	8/22/2008	5/15/2009							
95/000,373	6/6/2008	7313720	Ordered	8/18/2008	12/19/2008								
95/000,374	6/6/2008	6970448	Ordered	8/6/2008	8/6/2008	3/26/2009							
95/000,375	6/6/2008	6624648	Ordered	9/3/2008	9/3/2008								
95/001,051	6/6/2008	6478711	Ordered	8/22/2008	8/22/2008								
95/001,052	6/11/2008	7189230	Ordered	9/10/2008	9/10/2008								
95/001,056	6/17/2008	7360970	Ordered	7/18/2008	7/18/2008	3/26/2009	6/19/2009						
95/001,057	6/19/2008	7267675	Ordered	8/12/2008	8/12/2008							1/13/2009	4/14/2009
95/000,381	6/26/2008	6582622	Ordered	9/15/2008	9/15/2008								
95/000,382	6/26/2008	6299793	Ordered	9/4/2008									
95/001,060	6/30/2008	6996561	Ordered	9/5/2008	11/13/2008	6/4/2009							
95/001,061	7/7/2008	6446045	Ordered	9/25/2008	9/25/2008								
95/000,384	7/9/2008	6829672	Ordered	9/30/2008	11/3/2008								
95/001,062	7/9/2008	7229436	Ordered	9/26/2008	9/26/2008								

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95/001,065	7/9/2008	7264730	Denied	10/8/2008									
95/001,068	7/14/2008	6829587	Ordered	10/9/2008									
95/001,069	7/21/2008	7249059	Ordered	10/17/2008	10/17/2008								
95/001,070	7/21/2008	6519629	Ordered	10/16/2008	10/31/2008								
95/001,071	7/23/2008	6737935	Ordered	8/28/2008	12/9/2008								
95/001,072	7/29/2008	6289975	Ordered	10/15/2008	10/15/2008								
95/001,073	7/30/2008	7240025	Ordered	10/24/2008	11/21/2008								
95/000,385	7/31/2008	6517510	Ordered	10/24/2008	10/24/2008								
95/000,386	8/1/2008	7223236	Ordered	10/30/2008									
95/000,387	8/6/2008	7314328	Ordered After Review	4/29/2009									
95/000,388	8/6/2008	7325994	Ordered After Review	4/29/2009									
95/000,390	8/13/2008	6709694	Ordered	10/23/2008	10/23/2008								
95/000,391	8/14/2008	6958423	Ordered	11/13/2008	1/26/2009								
95/000,392	8/22/2008	7330276	Ordered	10/22/2008	3/20/2009								
95/000,394	8/29/2008	6763345	Denied	11/28/2008									
95/001,077	9/2/2008	7376831	Ordered	11/28/2008	3/30/2009								
95/000,395	9/4/2008	6074454	Terminated								11/21/2008		
95/001,078	9/4/2008	7193562	Ordered	11/28/2008		11/28/2008	7/10/2009						
95/001,079	9/4/2008	7358912	Ordered	12/2/2008	3/19/2009								
95/001,081	9/12/2008	6493377	Terminated										
95/001,082	9/15/2008	6812009	Ordered	10/27/2008	10/27/2008	7/13/2009							
95/000,396	9/23/2008	6516236	Ordered	11/20/2008	1/23/2009								
95/000,397	9/23/2008	6941543	Ordered	11/25/2008	1/29/2009								
95/000,398	9/23/2008	6513058	Ordered	11/25/2008	1/29/2009								
95/000,400	9/25/2008	6763345	Denied	12/18/2008									
95/000,403	9/26/2008	7411129	Ordered	12/5/2008	12/5/2008	7/1/2009							
95/001,083	10/1/2008	6991483	Ordered	11/28/2008	11/28/2008								
95/001,085	10/2/2008	7097719	Ordered	12/12/2008									
95/001,086	10/2/2008	7225231	Ordered	11/28/2008	4/3/2009								
95/001,088	10/10/2008	6188988	Ordered	1/7/2009		6/11/2009							
95/000,404	10/14/2008	7035281	Ordered	1/12/2009		3/26/2009							
95/000,405	10/16/2008	6687278	Ordered	12/19/2008	12/19/2008								
95/001,090	10/16/2008	6990910	Ordered	1/7/2009	1/7/2009								
95/000,406	10/20/2008	6654400	Ordered	12/19/2008	12/19/2008								
95/000,407	10/21/2008	7140443	Ordered	1/14/2009	1/26/2009								
95/001,091	10/24/2008	7360338	Ordered	12/9/2008	12/9/2008								
95/001,095	10/24/2008	7300662	Ordered	12/31/2008	12/31/2008								
95/001,096	10/24/2008	7217286	Ordered	12/22/2008	12/22/2008								
95/001,097	10/24/2008	7223286	Ordered	12/19/2008	1/30/2009								
95/001,102	10/24/2008	7229473	Ordered	1/5/2009	1/5/2009								
95/000,408	10/27/2008	6835887	Ordered	1/9/2009	6/1/2009								
95/000,409	10/27/2008	6369313	Ordered	1/12/2009	6/10/2009								
95/000,410	10/27/2008	6225547	Ordered	1/16/2009									

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95/001,103	10/29/2008	7390848	Denied	1/16/2009							7/14/2009		
95/000,411	11/6/2008	6597854	Ordered	1/12/2009	1/12/2009	7/2/2009							
95/000,412	11/6/2008	6868220	Ordered	1/12/2009	1/12/2009	7/13/2009							
95/000,415	11/6/2008	6925242	Ordered	1/12/2009	1/12/2009	7/14/2009							
95/001,104	11/6/2008	7421086	Ordered	1/27/2009	3/19/2009								
95/001,105	11/6/2008	6751696	Ordered	1/27/2009	3/13/2009								
95/001,106	11/6/2008	6266285	Ordered	1/9/2009	3/13/2009								
95/001,107	11/7/2008	6314051	Ordered	1/9/2009	3/13/2009								
95/001,108	11/7/2008	6584037	Ordered	1/9/2009	2/13/2009								
95/000,416	11/10/2008	6496827	Terminated								4/15/2009		
95/001,109	11/11/2008	6546446	Ordered	1/9/2009	2/13/2009								
95/001,111	11/14/2008	7040500	Ordered	1/7/2009	1/7/2009								
95/001,112	11/17/2008	6182184	Ordered	1/16/2009	3/20/2009	4/15/2009							
95/001,113	11/18/2008	7048050	Ordered	1/30/2009	1/30/2009								
95/001,114	11/18/2008	7219744	Ordered	2/6/2009	2/6/2009								
95/001,115	11/18/2008	7004259	Ordered	1/30/2009	1/30/2009								
95/001,116	11/18/2008	7281587	Ordered	2/13/2009	2/13/2009								
95/001,117	11/18/2008	7213656	Ordered	1/30/2009	1/30/2009								
95/001,118	11/18/2008	7100710	Ordered	1/30/2009	1/30/2009								
95/001,119	11/18/2008	7353880	Ordered	2/6/2009	2/6/2009								
95/001,120	11/18/2008	7228901	Ordered	1/30/2009	1/30/2009								
95/001,121	11/18/2008	7128161	Ordered	1/30/2009	1/30/2009								
95/001,122	11/20/2008	6426316	Ordered	1/16/2009	3/20/2009								
95/001,123	11/21/2008	6871450	Ordered	1/7/2009	1/7/2009								
95/001,124	11/24/2008	6452863	Ordered	1/16/2009	3/20/2009								
95/000,418	11/25/2008	7377324	Ordered	2/10/2009	2/10/2009								
95/001,125	11/26/2008	7334846	Ordered	1/5/2009	1/5/2009								
95/001,126	12/1/2008	7344463	Ordered	1/16/2009	1/16/2009								
95/000,421	12/5/2008	7364160	Ordered	6/4/2009									
95/000,422	12/9/2008	7374111	Ordered	12/18/2009		2/18/2009							
95/001,127	12/9/2008	7205544	Ordered	3/9/2009	3/9/2009								
95/000,414	12/11/2008	6851894	Ordered	2/20/2009	2/20/2009								
95/001,128	12/15/2008	6378020	Ordered	2/6/2009									
95/000,423	12/18/2008	6666377	Ordered	2/20/2009	2/20/2009								
95/000,424	12/19/2008	6623846	Ordered	2/5/2009	2/5/2009								
95/001,129	12/19/2008	7340506	Ordered	3/6/2009	3/6/2009								
95/000,425	12/23/2008	7220022	Ordered	2/17/2009	3/30/2009								
95/000,426	12/24/2008	7234174	Denied	4/8/2009									
95/001,131	12/31/2008	6266285	Ordered	1/22/2009	3/13/2009						4/15/2009		
95/001,132	12/31/2008	6314051	Ordered	2/17/2009	3/13/2009								
95/001,133	12/31/2008	6751969	Ordered	1/22/2009	3/13/2009								
95/001,134	1/9/2009	6260097	Ordered	3/13/2009	6/5/2009								
95/001,138	1/21/2009	7363349	Ordered	4/8/2009									
95/000,428	1/22/2009	6818020	Ordered	4/9/2009	4/9/2009								
95/000,429	1/23/2009	7306235	Ordered	3/6/2009		3/6/2009	5/13/2009						
95/000,430	1/23/2009	7302925	Ordered	3/18/2009	3/18/2009								

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95/001,140	1/28/2009	7410475	Ordered After Review	3/11/2009	3/11/2009								
95/000,431	1/29/2009	6663347	Ordered	3/18/2009									
95/000,433	1/29/2009	6904949	Ordered	3/30/2009									
95/000,434	1/29/2009	6629556	Ordered	3/30/2009									
95/000,437	2/3/2009	7174661	Ordered	3/6/2009	3/6/2009								
95/000,438	2/6/2009	6421210	Ordered	5/4/2009	5/4/2009								
95/000,439	2/6/2009	7305625	Ordered	4/30/2009									
95/001,143	2/11/2009	7343414	Ordered	4/8/2009	4/16/2009								
95/001,144	2/11/2009	7020704	Ordered	4/13/2009	4/21/2009						4/21/2009		
95/001,145	2/11/2009	6410278	Terminated										
95/001,146	2/11/2009	6974670	Denied	3/26/2009									
95/001,147	2/18/2009	7217368	Ordered	5/14/2009	5/14/2009								
95/001,148	2/19/2009	6542660	Ordered	5/4/2009	5/4/2009								
95/001,152	2/27/2009	6324120	Ordered	4/22/2009									
95/000,444	3/3/2009	6623381	Ordered	5/26/2009	5/26/2009								
95/001,154	3/3/2009	6584037	Ordered	4/22/2009									
95/000,452	3/10/2009	7500796	Ordered	3/30/2009	3/30/2009								
95/001,155	3/11/2009	6546446	Ordered	4/23/2009									
95/000,451	3/12/2009	6936050	Ordered	4/29/2009	6/17/2009								
95/001,156	3/13/2009	7264730	Ordered	5/15/2009	5/15/2009								
95/001,159	3/24/2009	7177998	Ordered	5/26/2009									
95/001,160	3/24/2009	7210016	Ordered	5/26/2009									
95/000,461	3/26/2009	7194691	Ordered	6/18/2009									
95/000,462	3/26/2009	7117443	Ordered	6/18/2009									
95/001,163	3/31/2009	6985569	Ordered	6/22/2009	6/22/2009								
95/001,164	4/1/2009	7139371	Ordered	5/8/2009	5/8/2009								
95/001,165	4/1/2009	7016481	Ordered	5/8/2009	5/8/2009								
95/001,166	4/3/2009	7287109	Ordered	5/15/2009	5/15/2009								
95/001,168	4/13/2009	6712880	Ordered	5/26/2009	5/26/2009								
95/001,169	4/21/2009	6591353	Ordered	7/6/2009	7/6/2009								
95/001,170	4/21/2009	7303680	Ordered	6/19/2009	6/19/2009								
95/001,171	4/23/2009	6768999	Ordered	5/22/2009	5/22/2009								
95/001,172	4/23/2009	6725427	Ordered	7/1/2009									
95/001,173	4/24/2009	6959112	Ordered	6/10/2009	6/10/2009								
95/001,174	4/24/2009	6804416	Ordered	7/13/2009									
95/001,175	4/24/2009	6415082	Ordered	7/2/2009									
95/001,178	4/24/2009	6470405	Ordered	7/7/2009	7/7/2009								
95/000,463	4/27/2009	6542673	Ordered										
95/001,183	4/29/2009	7321783	Ordered										
95/001,184	4/30/2009	7068668	Ordered	6/22/2009	6/22/2009								
95/001,185	4/30/2009	7486667	Ordered	6/22/2009	6/22/2009								
95/001,186	4/30/2009	6775371	Ordered										
95/000,465	5/5/2009	7128744	Ordered	6/19/2009									
95/000,467	5/6/2009	7171771	Ordered	6/24/2009	6/24/2009								
95/000,466	5/7/2009	7321937	Ordered	6/22/2009	6/22/2009								

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95/000,468	5/8/2009	6623486	Ordered	6/19/2009									
95/000,469	5/12/2009	7389243											
95/001,188	5/12/2009	6304937	Ordered	7/7/2009									
95/000,470	5/14/2009	6564281	Ordered	7/6/2009									
95/000,471	5/15/2009	7209997	Ordered	7/7/2009									
95/001,189	5/18/2009	7287119											
95/000,475	5/19/2009	7179999											
95/001,190	5/19/2009	6990660											
95/000,478	5/21/2009	7378992											
95/001,191	5/26/2009	6681120	Ordered	7/1/2009									
95/000,479	5/28/2009	7161506											
95/001,192	5/28/2009	6879830											
95/001,193	5/28/2009	7043751											
95/000,480	6/4/2009	7475180											
95/000,481	6/4/2009	7475181											
95/001,196	6/4/2009	7330952											
95/000,482	6/9/2009	7176489											
95/000,483	6/9/2009	6815321											
95/001,201	6/23/2009	7330953											
95/001,202	6/23/2009	7207949											
95/001,203	6/24/2009												
95/001,205	7/1/2009	7360050											
95/000,485	7/6/2009	7369772											
95/000,486	7/8/2009	6604158											
95/000,484													
95/001,207													
95/001,080	9/9/2008	7321783	Ordered	11/29/2008	2/24/2009								
95/000,449	3/12/2009	6936051	Ordered	4/30/2009	6/18/2009								
95/001,040	4/28/2008	7363167	Ordered	7/11/2008	1/26/2009								
95/000,333	1/18/2008	7096212	Ordered	3/7/2008	3/7/2008	5/5/2009							
95/001,026	1/31/2008	6378020	Ordered	4/9/2008									
95/001,066	7/16/2008	7303680	Denied	10/8/2008									
95/000,294	8/30/2007	7152413	Ordered	10/4/2007	10/4/2007								
95/001,050	6/12/2008	6850130	Ordered	7/15/2008	12/19/2008								
95/000,435	2/11/2009	7361251	Ordered	4/24/2009	4/24/2009								
95/000,436	2/11/2009	7368032	Ordered	4/15/2009	4/15/2009								
95/001,167	4/14/2009	6784873	Ordered	6/1/2009	6/16/2009								
95/001,009	10/11/2007	6939052	Ordered	12/4/2007	12/4/2007	3/26/2009							
95/001,197	6/17/2009	6611789											
95/001,199	6/17/2009												
95/001,161	4/9/2009	6435279	Ordered	6/12/2009	6/12/2009				</				

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95/000,286	8/31/2007	6460042	Denied	11/19/2007									
95/001,020	1/7/2008	7090906	Ordered	3/28/2008	4/27/2009							11/16/2007	4/15/2008
95/000,401	10/14/2008	7021515	Ordered	12/5/2008	12/5/2008							5/14/2009	
95/000,164	10/6/2006	7052301	Ordered	12/8/2006	12/8/2006							5/14/2009	
95/000,297	9/12/2007	6865604	Ordered	11/19/2007	1/4/2008	6/12/2008	1/16/2009					1/16/2009	
95/000,298	9/12/2007	6880004	Ordered	11/19/2007	1/4/2008	6/12/2008	1/16/2009					5/14/2009	
95/000,299	9/12/2007	6871229	Ordered	11/19/2007	1/4/2008	1/4/2008	7/7/2008					1/16/2009	
95/001,034	3/19/2008	6853714	Ordered	4/25/2008	9/5/2008	3/26/2009	7/6/2009						
95/001,063	7/28/2008	7318892	Ordered	10/15/2008	11/26/2008								
95/001,064	7/28/2008	7351340	Denied	10/21/2008									
95/001,002	9/6/2007	6422595	Ordered	11/30/2007	11/30/2007								
95/001,003	9/6/2007	6397136	Ordered	11/21/2007	2/5/2009								
95/001,110	12/1/2008	7424133	Ordered	2/2/2009	2/2/2009								
95/000,427	3/18/2009	7214536	Ordered	5/27/2009	5/27/2009								
95/000,443	3/18/2009	6833252	Ordered	5/27/2009	5/27/2009								
95/000,178	10/6/2006	6324120	Ordered	12/26/2006	7/3/2008	2/13/2009							
95/000,233	3/13/2007	6791088	Ordered	5/17/2007	6/26/2007	10/31/2008							
95/001,029	2/28/2008	6459806	Ordered	5/22/2008	3/27/2009								
95/000,242	4/12/2007	6429210	Ordered	7/6/2007	8/14/2007	4/3/2008							
95/001,019	1/4/2008	6533078	Ordered	3/4/2008	3/4/2008								
95/001,142	3/6/2009	6838101	Ordered	5/8/2009	5/8/2009								
95/001,198	6/29/2009	6716139	Ordered										
95/000,162	10/17/2006	7096977	Ordered	12/18/2006	12/18/2006								
95/001,031	3/11/2008	7113152	Ordered	5/14/2008	12/19/2008								
95/000,413	12/2/2008	7167625	Ordered	1/12/2009	1/12/2009	7/13/2009							
95/001,141	3/6/2009	7351180	Ordered	5/22/2009		5/29/2009							
95/000,477	6/16/2009	7283340	Ordered										
95/001,151	3/23/2009	7376608	Ordered										
95/000,450	4/6/2009	6916320	Denied	5/14/2009									
95/000,182	10/19/2006	6644595	Ordered	1/10/2007	2/29/2008								
95/000,232	3/21/2007	7022993	Ordered	5/17/2007	8/3/2007	10/29/2008							
95/001,001	9/7/2007	7145902	Ordered	11/27/2007	11/27/2007	8/6/2008	10/3/2008	6/17/2009					
95/000,296	9/20/2007	6991169	Ordered	12/12/2007	12/12/2007								
95/000,328	1/14/2008	6892211	Ordered	4/2/2008	8/28/2008								
95/001,032	3/17/2008	6964850	Ordered	5/20/2008	5/20/2008								
95/001,153	4/2/2009	6799994	Ordered										
95/001,162	4/30/2009	6722177	Ordered	5/21/2009	5/21/2009								
95/000,264	6/18/2007	7186251	Ordered	9/10/2007	9/10/2007	1/13/2009	3/20/2009					5/19/2009	
95/000,301	10/2/2007	6660297	Ordered	12/21/2007	12/21/2007								
95/000,371	6/30/2008	7021668	Ordered	9/23/2008	9/23/2008	3/23/2009	5/27/2009						
95/000,203	1/16/2007	6987242	Ordered	4/10/2007	4/10/2007	2/20/2009	7/2/2009						
95/000,215	2/15/2007	6974845	Ordered	4/27/2007	4/27/2007	11/14/2008	3/30/2009					5/18/2009	
95/000,244	4/26/2007	6336312	Ordered	7/16/2007	7/16/2007	2/27/2008	1/27/2009						
95/000,245	4/26/2007	6336311	Ordered	7/16/2007	7/16/2007	6/5/2009							
95/000,380	7/30/2008	6372460	Ordered	10/8/2008	10/27/2008						4/23/2009		
95/000,455	4/27/2009	6639588	Ordered										

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Inter Partes Reexam Statistics

Control No.	Filing Date	Patent No.	Determination	Determination Date	Initial OA	Action Closing Prosecution	Right of Appeal Notice	Examiner's Answer	BPAI Decision	Decision Outcome	Terminated	Notice of Intent to Issue Certificate	Certificate
95/000,456	4/27/2009	6686895	Ordered	1/26/2007	3/9/2007						2/11/2009		
95/000,186	11/15/2006	6760749	Ordered	4/10/2007	4/10/2007	2/20/2009	7/2/2009						
95/000,202	1/17/2007	6329636	Ordered	4/10/2007	4/10/2007	2/20/2009	7/2/2009						
95/000,204	1/17/2007	6815639	Ordered	4/13/2007	4/13/2007	11/11/2007	6/25/2008	3/27/2009					
95/000,209	1/25/2007	6984791	Ordered	4/13/2007	4/13/2007								
95/000,389	9/10/2008	7164970	Ordered	12/3/2008	12/3/2008								
95/000,169	9/5/2006	6826661	Ordered	10/31/2006	10/31/2006	3/27/2009							
95/000,190	11/17/2006	6496216	Ordered	2/3/2007	10/31/2008						2/11/2009		
95/000,192	11/17/2006	6757055	Ordered	2/3/2007	10/31/2008						2/10/2009		
95/000,219	3/8/2007	7169418	Ordered	6/7/2007		6/7/2007	1/14/2008					3/23/2009	
95/000,195	7/6/2009	7351340											
95/000,319	1/7/2008	6429231	Ordered	3/31/2008	2/2/2009								
95/000,440	3/18/2009	7381804	Ordered	5/13/2009	5/13/2009								
95/000,149	8/21/2006	6503773	Ordered	10/27/2006	10/27/2006	4/4/2008	9/29/2008					3/31/2009	6/30/2009
95/000,240	4/24/2007	6795605	Ordered	6/26/2007	10/1/2007								
95/000,044	6/26/2008	7096776	Ordered	8/1/2008	8/1/2008	4/3/2009							
95/000,460	5/4/2009	6304236											
95/000,254	5/30/2007	6675788	Ordered	8/8/2007	7/7/2008								
95/000,266	7/11/2007	6716459	Ordered	9/26/2007	9/26/2007	3/26/2009							
95/000,360	5/15/2008	6782789	Ordered	6/23/2008	6/23/2008	3/9/2009							
95/000,158	5/1/2009	7138275	Ordered	7/2/2009	7/2/2009								
95/000,473	6/30/2009	7339116											
95/000,238	4/20/2007	6777014	Ordered	6/29/2007	6/29/2007	7/17/2008							
95/000,464	6/17/2009	6624761											
95/000,457	5/7/2009	6549970											
95/000,458	5/7/2009	7089342											
95/000,151	8/4/2006	6285746			10/26/2006							2/12/2009	5/5/2009
95/000,179	6/8/2009	7088862	Ordered	10/2/2006									
95/000,180	6/8/2009	7190834											
95/000,181	11/14/2006	6609034	Ordered	1/29/2007	1/29/2007	3/26/2009							
95/000,260	6/22/2007	6939348	Ordered	8/16/2007	8/16/2007	12/19/2008	3/23/2009					5/19/2009	
95/000,291	10/1/2007	6804129	Ordered	11/9/2007	3/26/2008	2/2/2009	5/27/2009						
95/000,187	11/29/2006	6739874	Ordered	2/23/2007	7/27/2007	5/5/2008	1/8/2009					3/30/2009	
95/000,188	11/29/2006	7018213	Ordered	2/26/2007	7/27/2007	5/2/2008	3/3/2009					5/11/2009	
95/000,189	11/29/2006	7029283	Ordered	2/23/2007	2/23/2007	7/20/2007	12/13/2007					5/9/2008	8/5/2008
95/000,191	11/29/2006	7006786	Ordered	2/26/2007	2/23/2007	7/23/2007	12/13/2007					5/2/2008	8/5/2008
95/000,248	5/9/2007	6924413	Ordered	8/1/2007	11/21/2007							3/17/2008	3/24/2009
95/000,177	6/10/2009	6850646											
95/000,181	6/10/2009	7065262											
95/000,182	6/10/2009	6856698											
95/000,184	11/21/2006	6938709	Ordered	2/8/2007	4/13/2007	5/5/2008	5/5/2009						
95/000,216	1/31/2007	6849827	Ordered	4/10/2007	4/10/2007	5/22/2008	8/29/2008						
95/000,231	3/30/2007	7007439	Ordered	4/24/2007	4/24/2007	2/27/2008	1/14/2009						
95/000,441	4/10/2009	7114668	Ordered	6/17/2009	6/17/2009							3/25/2009	5/19/2009
95/000,442	4/10/2009	6740232	Ordered	7/1/2009	7/1/2009								
95/000,150	4/14/2009	6841523	Ordered	6/19/2009	6/19/2009								

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Inter Partes Reexam Statistics

Control No.	Filing Date	Patent No.	Determination	Determination Date	Initial OA	Action Closing Prosecution	Right of Appeal Notice	Examiner's Answer	BPAJ Decision	Decision Outcome	Terminated	Notice of Intent to Issue Certificate	Certificate
95/000,472	7/8/2009	6596944											
95/000,205	2/2/2007	7049546	Ordered	4/10/2007	4/10/2007	11/14/2008	4/22/2009						
95/001,130	2/12/2009	7000235	Ordered	3/26/2009	3/26/2009								
95/000,285	9/21/2007	7097719	Ordered	12/19/2007	12/19/2007								
95/000,459	5/15/2009	6513088											
95/000,185	12/4/2006	6357193	Ordered	2/23/2007	9/12/2008								
95/000,399	11/17/2008	6447190	Ordered	1/7/2009	1/7/2009								
95/000,372	7/23/2008	6501906	Ordered	10/20/2008	10/20/2008								
95/001,092	12/17/2008	7332225	Ordered	2/19/2009	2/19/2009								
95/000,174	8/16/2006	6838728	Ordered	10/26/2006	10/26/2006	11/21/2008	3/4/2009						
95/000,157	9/13/2006	6730333	Ordered	11/21/2006									
95/000,364	6/23/2008	7179540	Ordered	8/29/2008	8/29/2008								
95/000,234	4/26/2007	6857971	Ordered	7/16/2007	7/16/2007								
95/001,187	7/10/2009	7481413									10/12/2007	2/3/2009	6/9/2009
95/001,021	2/26/2008	7110562	Ordered	4/14/2008	3/18/2009								
95/001,022	2/26/2008	7016512	Ordered	4/22/2008	3/18/2009								
95/000,170	8/11/2006	6703144	Ordered	10/26/2006	10/26/2006	9/21/2007	2/27/2009					6/8/2009	
95/000,155	9/19/2006	6784901	Ordered	12/7/2006	12/7/2006	9/21/2007	4/17/2008					6/30/2008	10/7/2008
95/000,177	11/9/2006	6864115	Ordered	1/10/2007	1/10/2007	5/1/2008	3/20/2009					7/13/2009	
95/000,173	8/1/2006	6529685	Ordered	9/29/2006	9/29/2006	10/23/2008	2/6/2009						
95/000,175	8/3/2006	6900094	Ordered	10/31/2006	10/31/2006								
95/000,324	2/8/2008	6857001	Ordered	4/4/2008	4/4/2008	6/19/2009						10/31/2008	1/27/2009
95/001,074	10/9/2008	6688501	Ordered	11/14/2008	11/14/2008							2/23/2009	5/12/2009
95/001,137	3/24/2009	6649368	Ordered	6/22/2009	6/22/2009								
95/000,447	5/18/2009	6592586	Denied	6/11/2009									
95/000,448	5/18/2009	6969390	Ordered	6/18/2009		6/18/2009							
95/000,196	1/26/2007	6521831	Ordered	4/13/2007	4/13/2007	1/14/2009							
95/000,446	5/20/2009	6428542	Ordered	6/30/2009	6/30/2009								
95/001,139	4/6/2009	7085566	Ordered	5/12/2009		5/12/2009							
95/000,226	4/19/2007	6351205	Ordered	6/15/2007	2/12/2008	6/5/2009							
95/000,230	4/19/2007	6563415	Ordered	6/4/2007	1/31/2008	6/19/2009							
95/000,239	5/30/2007	7142347	Ordered	8/1/2007	8/1/2007								
95/000,393	11/11/2008	6213703	Ordered	3/23/2007	3/23/2007		7/1/2009						
95/000,194	1/12/2007	6649480	Ordered	12/31/2008	12/31/2008	5/22/2008							
95/001,076	1/12/2008	6770748	Ordered	2/22/2008	2/29/2008								
95/000,306	1/4/2008	6852191	Ordered	9/5/2007	7/3/2008								
95/000,250	6/28/2007	6452863	Ordered	6/26/2007	6/26/2007	7/3/2008	12/31/2008					5/12/2009	
95/000,243	6/13/2007	7100061	Ordered	4/15/2008	12/31/2008	7/9/2009							
95/001,014	2/1/2008	7148803	Ordered	10/5/2007	10/5/2007								
95/000,255	7/20/2007	6750386	Ordered	11/20/2008	11/20/2008								
95/000,377	9/15/2008	7223361	Ordered	7/26/2007	10/3/2008	6/30/2009							
95/000,220	5/4/2007	6400303	Ordered	7/12/2007									
95/000,221	5/4/2007	6906700	Ordered	11/22/2006	11/22/2006						4/14/2009		
95/000,147	9/8/2006	6979468	Ordered	6/5/2008	6/5/2008						3/6/2008		6/3/2008
95/001,027	4/28/2008	7250464	Ordered	4/10/2009		1/29/2009							
95/000,417	2/13/2009	6904370	Ordered		6/22/2009								

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Inter Partes Reexam Statistics

Control No.	Filing Date	Patent No.	Determination	Determination Date	Initial OA	Action Closing Prosecution	Right of Appeal Notice	Examiner's Answer	BPAI Decision	Decision Outcome	Terminated	Notice of Intent to Issue Certificate	Certificate
95/000,217	5/7/2007	6344791	Ordered	8/1/2007	5/7/2008								
95/000,222	5/10/2007	6344791	Ordered	8/2/2007	5/7/2008								
95/000,223	5/10/2007	6343991	Ordered	7/18/2007	7/18/2007	2/25/2009							
95/000,224	5/10/2007	6563415	Ordered	6/15/2007	1/31/2008	6/19/2009							
95/000,225	5/10/2007	6351205	Ordered	6/25/2007	2/12/2008	6/5/2009							
95/000,383	10/23/2008	6719434	Ordered	1/12/2009	3/13/2009								
95/000,287	11/23/2007	7255851	Ordered	1/25/2008	3/19/2008	2/18/2009	7/10/2009						
95/000,214	4/24/2007	6347997	Ordered	7/17/2007	7/17/2007	9/22/2008	2/12/2009					6/19/2009	
95/000,402	1/26/2009	6442573	Ordered	3/30/2009	3/30/2009								
95/000,236	6/11/2007	6786546	Ordered	9/5/2007	9/5/2007	4/18/2007	2/25/2008				2/12/2009		
95/000,195	2/14/2007	6364302	Ordered	2/27/2007	2/27/2007								
95/000,378	10/9/2008	7344450	Ordered	12/19/2008	3/25/2009								
95/000,420	3/30/2009	6880825	Ordered	6/5/2009	2/25/2009								
95/001,075	11/26/2008	6749624	Ordered	2/25/2009	2/25/2009	9/3/2008	1/13/2009					3/25/2009	6/30/2009
95/000,148	11/22/2006	6783054	Ordered	2/16/2007	4/9/2008								
95/000,379	11/7/2008	6965874	Ordered	2/2/2009	2/2/2009								
95/000,325	4/18/2008	7165175	Ordered	6/23/2008	3/23/2009								
95/000,288	1/15/2008	6547764	Ordered	2/29/2008	2/29/2008	8/22/2008	11/20/2008						
95/000,251	9/20/2007	6721178	Ordered	1/1/2007	11/1/2007	10/3/2008	2/26/2009						
95/000,419	12/3/1980	6951596	Ordered	2/13/2009	2/13/2009								
95/000,011	4/17/2003	6317592	Terminated								5/19/2003		
95/000,019	6/3/2003	6467939	Terminated								8/20/2003		
95/000,167	8/7/2006	6874090	Terminated								11/1/2006		
95/000,207	12/15/2006	6536352	Ordered	3/13/2007	3/13/2007	3/17/2008	9/5/2008						
95/000,252		6910601	Terminated								4/11/2008		
95/000,256		6979117	Terminated								8/6/2008		
95/000,290		6501906	Terminated								2/26/2008		
95/000,305		7021515	Terminated								1/28/2008		
95/000,318		6387081	Terminated								1/28/2008		
95/000,331		6709694	Terminated								3/5/2008		
95/000,432		7418423	Terminated										
95/000,453		6604158											
95/000,454		RE40385											
95/000,474		6570095											
95/000,476		6998537											
95/000,487													
95/001,004		6459806	Terminated								2/7/2008		
95/001,015		6365204	Terminated								1/29/2008		
95/001,023		7139404	Terminated								4/3/2008		
95/001,045		6869799	Terminated								8/25/2008		
95/001,046		7241424	Terminated								8/25/2008		
95/001,059		6959183	Terminated								10/20/2008		
95/001,067		7167503	Terminated								10/16/2008		
95/001,087		7167503	Terminated								3/10/2009		
95/001,135		6095850	Terminated								3/10/2009		
95/001,149		7376608	Terminated								3/31/2009		

Inter Partes Reexam Statistics

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Control No.	Filing Date	Patent No.	Determination	Determination Date	Initial OA	Action Closing Prosecution	Right of Appeal Notice	Examiner's Answer	BPAI Decision	Decision Outcome	Terminated	Notice of Intent to Issue Certificate	Certificate
95/001,157		5953263	Terminated								3/31/2009		
95/001,176		6771808											
95/001,194		7400858											
95/001,200		6564604											
95/001,204		7160058											
95/001,206													
95/001,208													

EXHIBIT G

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Inter Partes Reexamination Filing Data - June 30, 2009

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EXHIBIT H

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Reexamining *Inter partes* Reexam

Beginning in 1981, U.S. patent law set up patent reexamination as an administrative alternative to litigation for addressing patent validity concerns. The idea was to create a less expensive and speedier alternative to decide questions of patent validity. Although the level of scrutiny of the U.S. patent system has risen dramatically in light of the ongoing debate over patent reform, reexamination has received relatively little attention. Recently however, we have observed a number of trends that suggest that it might be time to carefully reexamine patent reexamination, particularly *inter partes* reexamination.

In doing so, we have discovered the following:

- *Inter partes* reexaminations requests are rising rapidly – a 6X increase between 2003 and 2007
- Reexamination, particularly *inter partes* reexamination is not simply used as an alternative to litigation, but an integral part of litigation strategy – more than half (52%) of patents in *inter partes* reexams are known to be in litigation during their reexamination
- Virtually all requests for *inter partes* reexamination are granted – 95% of *inter partes* reexam requests are granted, and this statistic may actually understate the effective grant rate
- To date, there has never been a single *inter partes* reexamination that has gone through the entire reexamination process (including appeal) and made it to completion – only three have ever received a decision by the Board of Patent Appeals and Interferences
- Despite a mandate for “special dispatch”, the time required to complete an *inter partes* reexamination is much longer than commonly believed
 - o Without appeal, the average pendency period for *inter partes* reexam is 43.5 months, much longer than the 28.5 months reported by the USPTO – a 95% confidence interval would put the pendency between 34 and 53 months
 - o Although no *inter partes* reexam has ever been completed after being appealed, the average pendency for appealed *inter partes* reexams is 78.4 months (assuming no rework by the patent office or secondary appeal) - a 95% confidence interval would put the pendency between 5 and 8 years

Why reexamine *inter partes* reexams?

Over the last several years, the number of reexamination requests at the USPTO has been rising rapidly. This is particularly true for *inter partes* reexams. The number of requests for *inter partes* reexam had increased 6X from 24 in calendar 2003 to 142 in calendar 2007. (Note: Our analysis is based on calendar years rather than the USPTO’s fiscal year.) This increase appears to be a result of the increasing use of reexamination as an integral part of litigation strategy by defendants or potential defendants in patent

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litigation. According to USPTO statistics, more than half (52%) of all patents subject to *inter partes* reexamination are known to be in litigation during the reexamination process.

The story of Microsoft and Avistar is a particularly telling example. After six months of licensing negotiation, Microsoft has requested reexamination of 24 of Avistar's 29 U.S. patents. Although Avistar's key patents have previously survived two significant litigations, Microsoft's actions have delayed its licensing program and placed the company into financial distress resulting in a 25% reduction in its U.S. and European workforce.

Although the reexamination statute in the U.S. may have been intended to provide an alternative to litigation, the actual use of reexamination appears to be an augmentation of litigation strategy rather than an alternative. In many cases, patent litigation in U.S. courts and 337 actions at the International Trade Commission (investigations of unfair trade practices related to IP infringement) run simultaneously with reexamination at the Patent Office. Simultaneous litigation and reexamination raise serious questions for U.S. courts about whether to wait for the results of a pending reexamination or continue with their court proceedings.

The conclusions so far have been mixed. In some cases, patent litigation has been stayed pending the results of reexam, while in others, the cases have continued. Many people will remember for example that Judge Spencer who presided over the contentious patent battle between NTP and RIM over the "Blackberry patents" famously refused to stay the litigation proceedings despite the fact that the PTO had issued an initial rejection of the claims at issue.

These difficult and often critical decisions by circuit court judges and administrative law judges depend heavily on their understanding and expectations of what will happen in the reexamination process at the PTO. How reliable are initial office actions as a predictor of final results in a reexamination? How long will the process take? How often are the patent examiner's finding upheld on appeal? For judges, these questions are critical in determining whether a request for a stay should be granted. For litigants, these questions can strongly influence litigation strategy.

Ex parte reexamination was established by statute in 1981, and more than 9,000 reexamination requests have been filed with more than 6,000 reexamination certificates issued (signaling the completion of the process). The *ex parte* reexamination process is well established. Much less is known about *inter partes* reexams. Established by statute in November of 1999, the first *inter partes* reexamination was not requested until 2001. Through mid-April of 2008, there have been 396 requests for *inter partes* reexamination at the USPTO, and only 16 of those have received reexamination certificates.

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Given the rising importance of reexaminations in general, and the relative scarcity of information about *inter partes* reexam specifically, we decided to take a closer look to discover what can be learned about this relatively little understood process.

What did we do?

To examine the *inter partes* reexamination process, we copied transaction level data for every *inter partes* reexamination from the USPTO's PAIR database. These transactions reveal both the sequence and the timing of each step through the process. The database we created all cases and transactions through April 16, 2008.

We noted and corrected a number of anomalies in the PTO data including:

- Several reexaminations appeared to proceed without the initial "Request for *Inter partes* Reexamination" transaction in the PTO data – we investigated and manually filled in this missing data
- Several reexaminations included references to "*ex parte*" reexamination despite the fact that they were "*inter partes*" reexams – we manually reviewed and resolved each discrepancy
- Duplicate transactions (same reexam number, same transaction, same date) were eliminated – these were generally not errors, but represent instances where the documents were uploaded into the PAIR system in multiple parts

We then extracted the key milestone transactions in the reexamination process and mapped the process and timeline for every *inter partes* reexamination to discover what path each case had taken through the process, and how long each step in the process takes. The results of our analysis are briefly described below, and more fully captured in the attached presentation slides.

What did we find?

Requests for *inter partes* reexamination are rising rapidly

As described above, the number of *inter partes* reexamination requests is rising rapidly. In 2007, there were 142 requests for *inter partes* reexams, three times as many as in 2005, and nearly six times as many as in 2003. *Inter partes* reexam requests have risen nearly 90% per year (CAGR) over the last five years.

Nearly all *inter partes* reexamination request are granted

Granting a request for reexamination is not automatic. The standard for granting a reexamination request requires that a "significant new question" of patentability must be presented by the requestor. Since their inception in 2001, there have been 396 requests for *inter partes* reexamination requested at the USPTO. Of these, 354 have reached a decision about whether the reexamination request will be granted. Over this period, ninety-five percent of all *inter partes* reexam requests have been granted. With so few requests being denied (19), we reviewed each case where a reexamination was denied, and found that the effective denial rate may actually be overstated. A number of the

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nineteen requests for reexamination that were denied are from a small number of inventions where multiple patent reexams were requested. Still others were not for utility patents, but were request for reexamination of design patents. It is fair to say that virtually all requests for *inter partes* reexamination are granted. Whatever threshold has been established by the Patent Office for determining a “significant new question” of patentability, few requestors have been unable to clear it.

The *inter partes* reexamination process is not linear

By tracing every single *inter partes* reexamination through the process, we were able to discover the path through reexamination that is actually followed by real patents in process. While the majority of patents follow the main sequence (Request → Grant → Non-final Office Action → ACP → Reexam Certificate), some cases skip steps, and others repeat steps multiple times. For example, some reexams skip over multiple steps and proceed quickly to a Reexam Certificate. This happens most often when the patent holder fails to respond to the Patent Office within the statutory timeframe, and the PTO proceeds to issue a certificate. Still other times, patents repeat steps multiple times. About one-quarter of the time *inter partes* reexams include multiple “Non-final Office Actions”, and about one-tenth of the time they receive multiple “Actions Closing Prosecution”.

One-quarter of all *inter partes* reexam decisions are appealed, but none has ever proceeded through appeal to the end of the process

One of the major challenges in examining the *inter partes* reexam process is that very few cases have proceeded all the way through the process. Through mid-April 2008, only nineteen cases have ever proceeded past the Notice of Right to Appeal. Of these, approximately one-quarter (5 cases - 26%) have been appealed to the Board of Patent Appeals and Interferences (BPAI), one case (~5%) went back for another Action Closing Prosecution, and the remaining 13 cases (68%) moved on to “Intent to Issue a Reexam Certificate”.

Of the cases that have gone on to appeal, only three have received a decision by the BPAI. None of the three decisions represents a final decision by the BPAI that can be appealed to the Federal Circuit as in each case, the Board added new grounds for rejection and remanded the cases to the Patent Office for further action. None of the three cases has reached a final Reexamination Certificate, and it has taken 4, 4, and 5 years for the cases to get to the initial BPAI decision.

The average pendency of 28.5 months reported by the USPTO is highly skewed

The USPTO regularly publishes statistics about *inter partes* reexaminations. According to their latest publication (December 31, 2007), the average pendency (Filing date to certificate issue date) is 28.5 months. This calculation is based on only 12 *inter partes* reexaminations that had reached a final certificate by that date. In our analysis which is up to date as of April 16, 2008, we found 16 reexaminations that had reached a final

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certificate. Our calculation of average pendency for those cases was only slightly longer at 30.1 months.

However, in carefully examining the 16 cases that have received final certificates, we note that 10 of the completed reexams skipped directly from the “First Non-final Action” to the “Intent to Issue a Reexam Certificate”. Upon closer inspection, each of these cases skipped multiple steps because the patent owner failed to respond to the office action. The average pendency of these cases was 24 months, while the average for the remaining six cases that followed the basic process (Non-final Action → ACP → Right of Appeal → Notice of Intent to Issue a Reexam Certificate → Reexam Certificate) was ~39 months. It should be noted that NONE of the cases that have received a final Reexam Certificate have gone to appeal.

While mathematically accurate, the pendency statistic provided by the USPTO is highly misleading. An appropriate reading of the statistic is that the Patent Office takes two years to dispose of a patent through *inter partes* reexam if the patent holder doesn’t care to defend its rights. It takes significantly longer to get to a resolution if the patent holder participates in the process.

Average pendency for an un-appealed *inter partes* reexam is more than 3.5 years

Given the small number of cases that have proceeded through the *inter partes* reexam process, a more appropriate way to estimate average pendency is to calculate the time required for cases to proceed through each step in the process and sum them up. We calculated an average time and a 95% confidence interval for each step in the main sequence. Based on our calculations, it takes more than 3 ½ years (43.5 months) for the average case to proceed through the basic reexam process to a final conclusion – this assumes that the case is not appealed to the BPAI or beyond. A 95% confidence interval suggests a range of between 34 and 53 months for average pendency for an un-appealed *inter partes* reexam.

Expected pendency for appealed *inter partes* reexams is at least 6.5 years

Inter partes cases that go through the appeal process can be expected to take much longer than the 3 ½ years described above. Calculating average pendency for appealed cases is difficult because as we have noted, there has never been an appealed *inter partes* case that has completed the process. However, if we make a conservative assumption that all cases that go through the appeal process will receive a decision by the BPAI and immediately move to “Intent to Issue a Reexam Certificate”, then we can calculate an average expected pendency. The result of this calculation is that average pendency (assuming no “rework” by the patent office and no secondary appeals to the BPAI, the Federal Circuit, or the Supreme Court) is 78.4 months – slightly longer than 6.5 years. A 95% confidence interval suggests an average pendency for appealed cases (again, assuming no rework) is between 5 and 8 years (60-97 months)! Given that the only three *inter partes* reexam cases that have received a BPAI decision all require further “rework” and are subject to further appeal, these estimates may be highly conservative.

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According to statute, reexam cases are to be handled with “special dispatch”. This means that reexam cases are to receive priority over all other cases. The Patent Office has reportedly set a target of 24 months to complete the reexam process, but so far, the actual time to conclude an *inter partes* reexam is far beyond this target. This can not help but raise significant concern to anyone who is interested in the efficient administration of justice in the U.S. patent system.

Conclusion

The *inter partes* reexam process requires special attention by the U.S. Patent Office. At present, the time to complete these cases far exceeds the expectation of “special dispatch” embodied in the patent statute. Federal judges, administrative law judges, and litigants should take special note of these facts as they can significantly impact the progress of patent litigation.

About the Authors:

Mark Blaxill and **Ralph Eckardt** are founding Fellows of the Institute for Progress, and authors of the upcoming book *The Invisible Edge: Taking Your Strategy to the Next Level Using Intellectual Property* (Portfolio, March 2009). They are managing partners of 3LP Advisors, an investment advisory firm focused on intellectual property transactions. Blaxill is a former vice president of The Boston Consulting Group (BCG) and was head of its Strategy practice initiative. Eckardt is the former head of BCG’s Intellectual Property Strategy practice.

Reexamining Inter Partes Reexam

April 2008

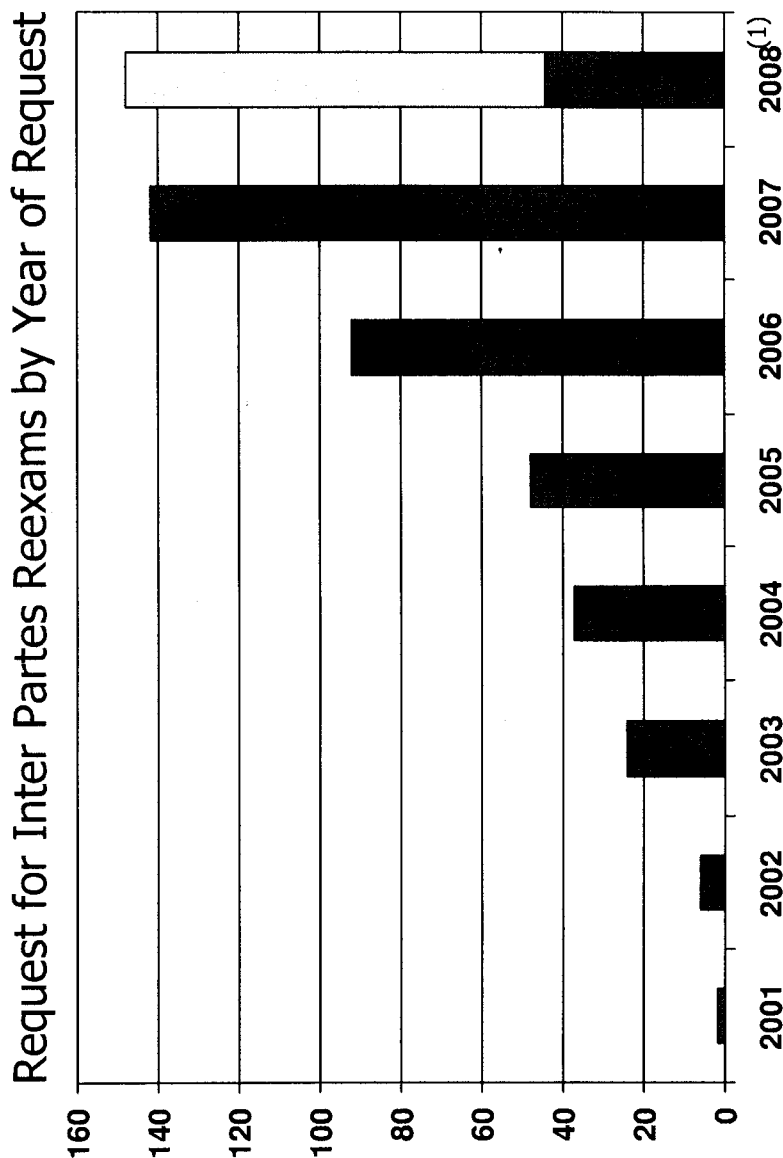
Data Source and Method of Analysis

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- All data was taken directly from the USPTO PAIR system
- Includes all Inter Partes Reexam cases and transactions listed through 16, 2008
 - Includes 95/000,001 through 95/000,362 and 95/001,001 through 95/001,025 except for cases 95/001,007 and 95/001,025 for which there is no data
 - Case 95/000,350 is excluded from timeline analysis since no date is recorded for the "Receipt of Original Inter Partes Reexam Request"
- All transactions were downloaded from the Electronic File Wrapper and were augmented with additional transactions from the Transaction Log wherever missing elements were identified
- Obvious anomalies were corrected manually
 - For example:
 - "Receipt of Original Inter Partes Reexam Request" identified where missing
 - Many erroneous references to "Ex Parte Reexams" were reviewed and eliminated
 - Duplicate transactions (same case number, same transaction, same date) were eliminated
- Key milestones for each case were extracted along with their dates and a timeline analysis was performed on these transactions

Requests for Inter Partes Reexams have been Rising Rapidly

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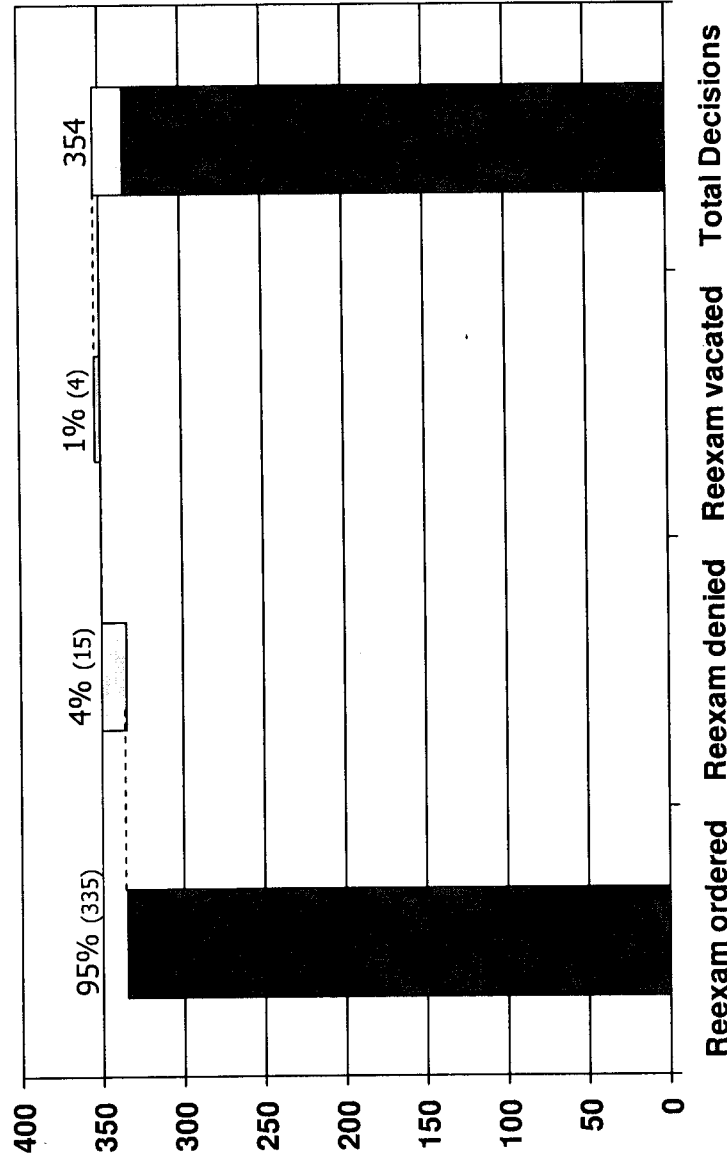
In 2007, there were ~6 times as many
inter partes reexam requests as in 2003

(1) Actual through 4/16/2008, Forecast equals (108 days/365 days) X 44 reexam requests to date
Note: Reexam requests are based on calendar years rather than fiscal years as generally reported by the USPTO
Source: USPTO PAIR Database; Institute for Progress analysis

Virtually all Requests for Inter Partes Reexamination are Granted

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Decisions on Request for Inter Partes Reexam

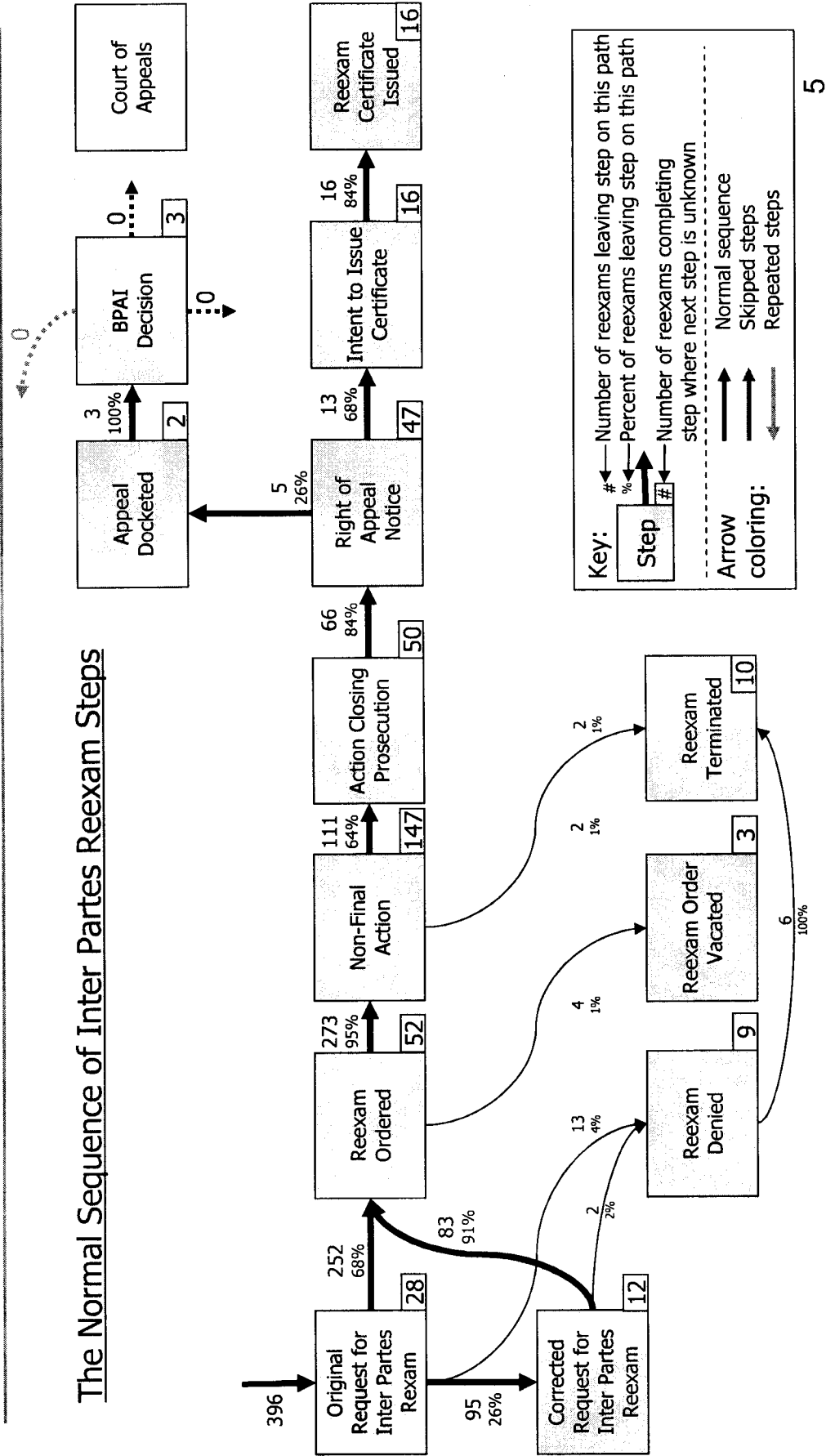


Among those rejected, several are for the same invention, and several others are design patents

Source: USPTO PAIR Database; Institute for Progress analysis

Most Cases Follow the Main Sequence through the USPTO Inter Partes Reexamination Process

All Inter Partes Reexams through April 16, 2008



Source: USPTO PAIR Database; Institute for Progress analysis

Generally Due to Patent Holder Non Responsiveness

All Inter Partes Reexams through April 16, 2008

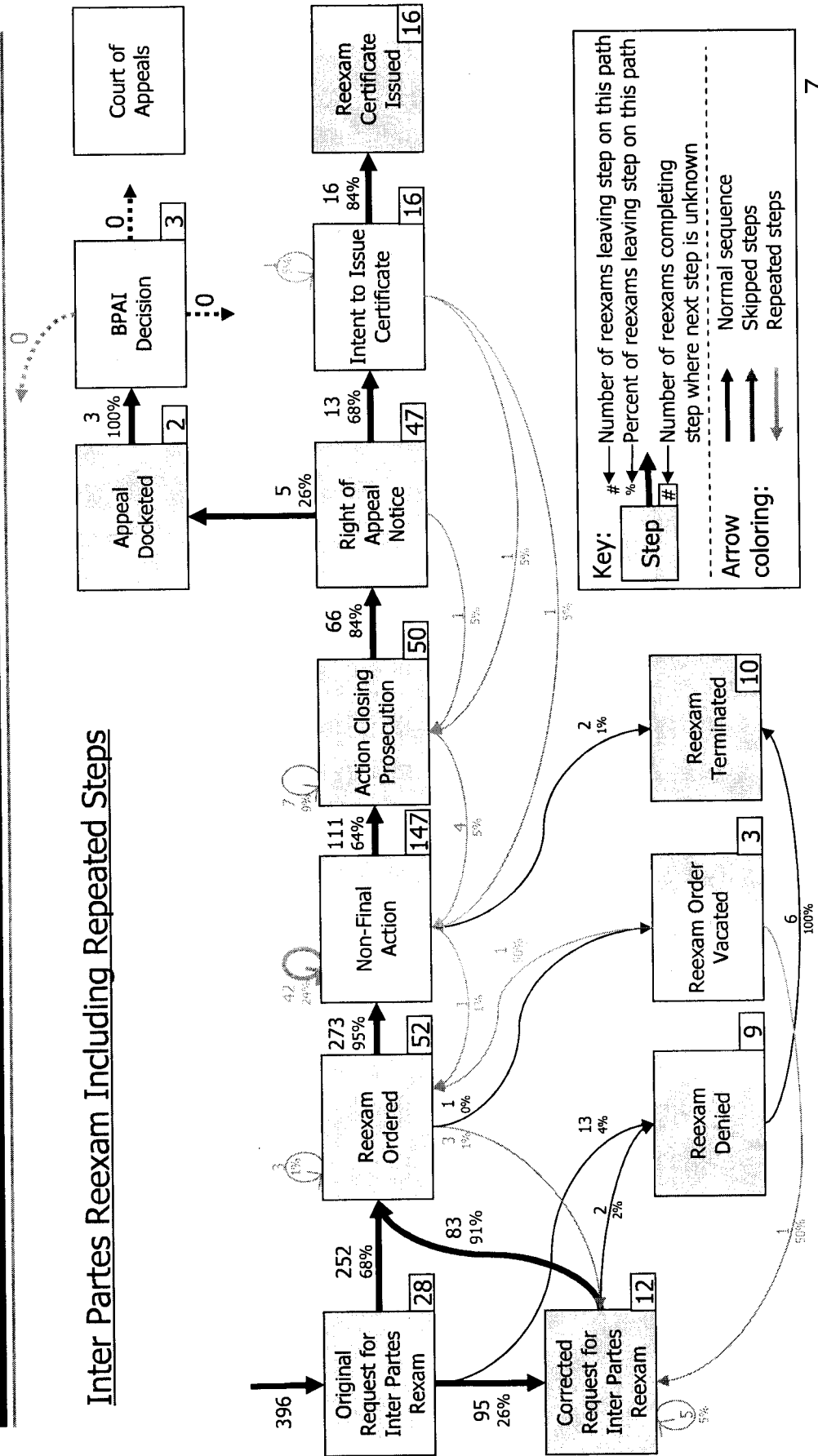


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...Other Cases Repeat Steps Multiple Times

All Inter Partes Reexams through April 16, 2008

Inter Partes Reexam Including Repeated Steps



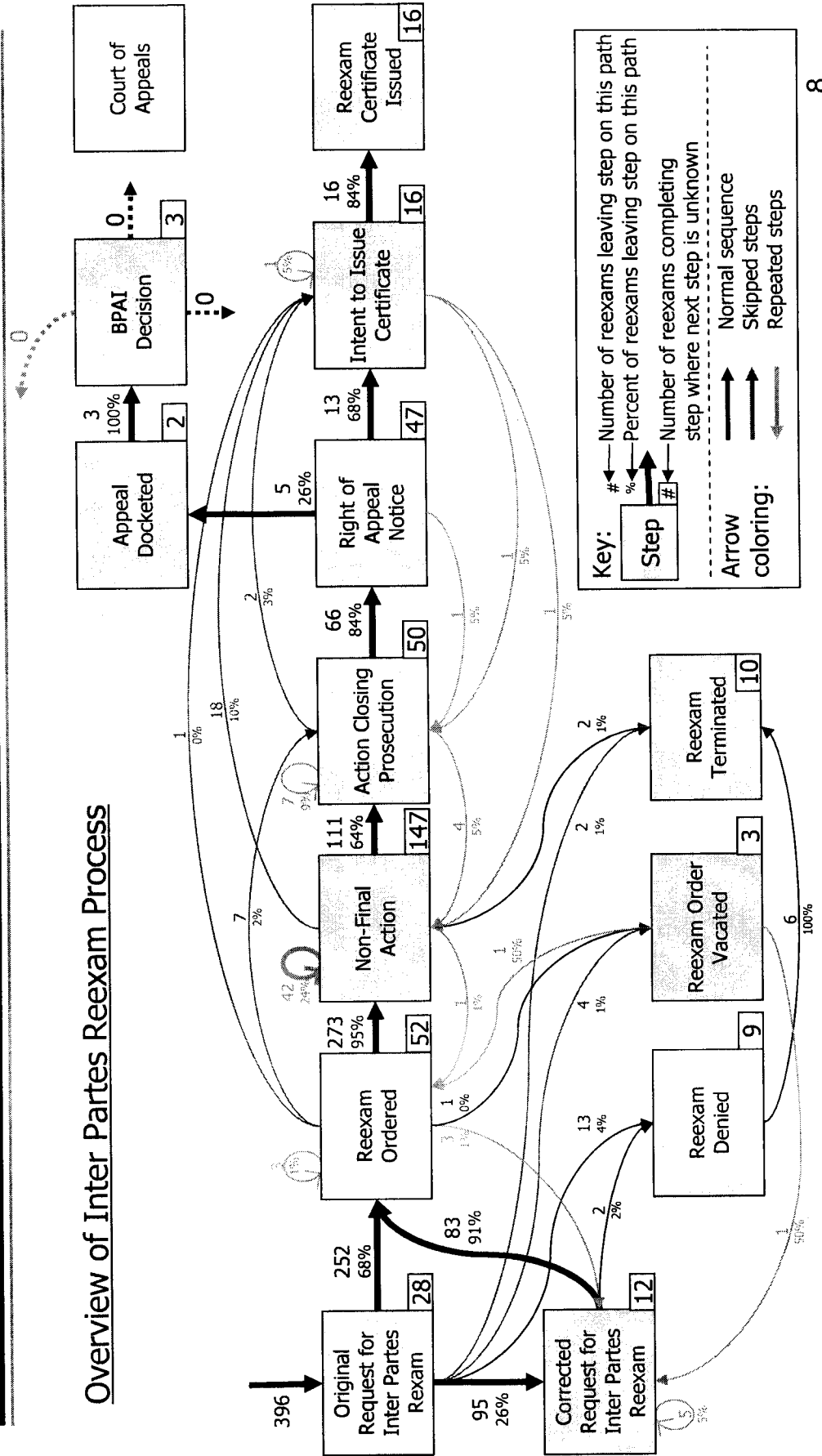
Source: USPTO PAIR Database; Institute for Progress analysis

Flow of Cases through the USPTO Inter Partes Reexamination Process

All Inter Partes Reexams through April 16, 2008

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Overview of Inter Partes Reexam Process

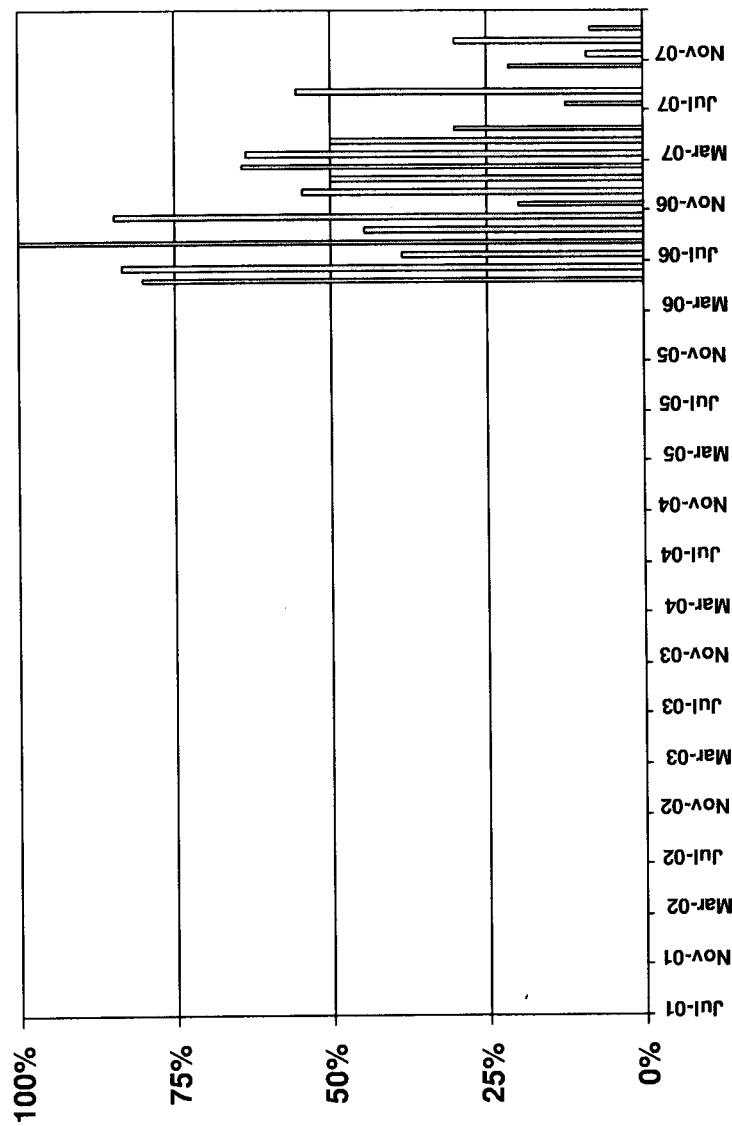


Note: Three other paths are not included on chart – A to F - 1,0%; A to G - 1,0%; B to G - 1,1%
Source: USPTO PAIR Database; Institute for Progress analysis

Correction of Inter Partes Reexam Requests Jumped in 2006, and has Subsided Since

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Percent of Inter Partes Reexam Requests Requiring Correction

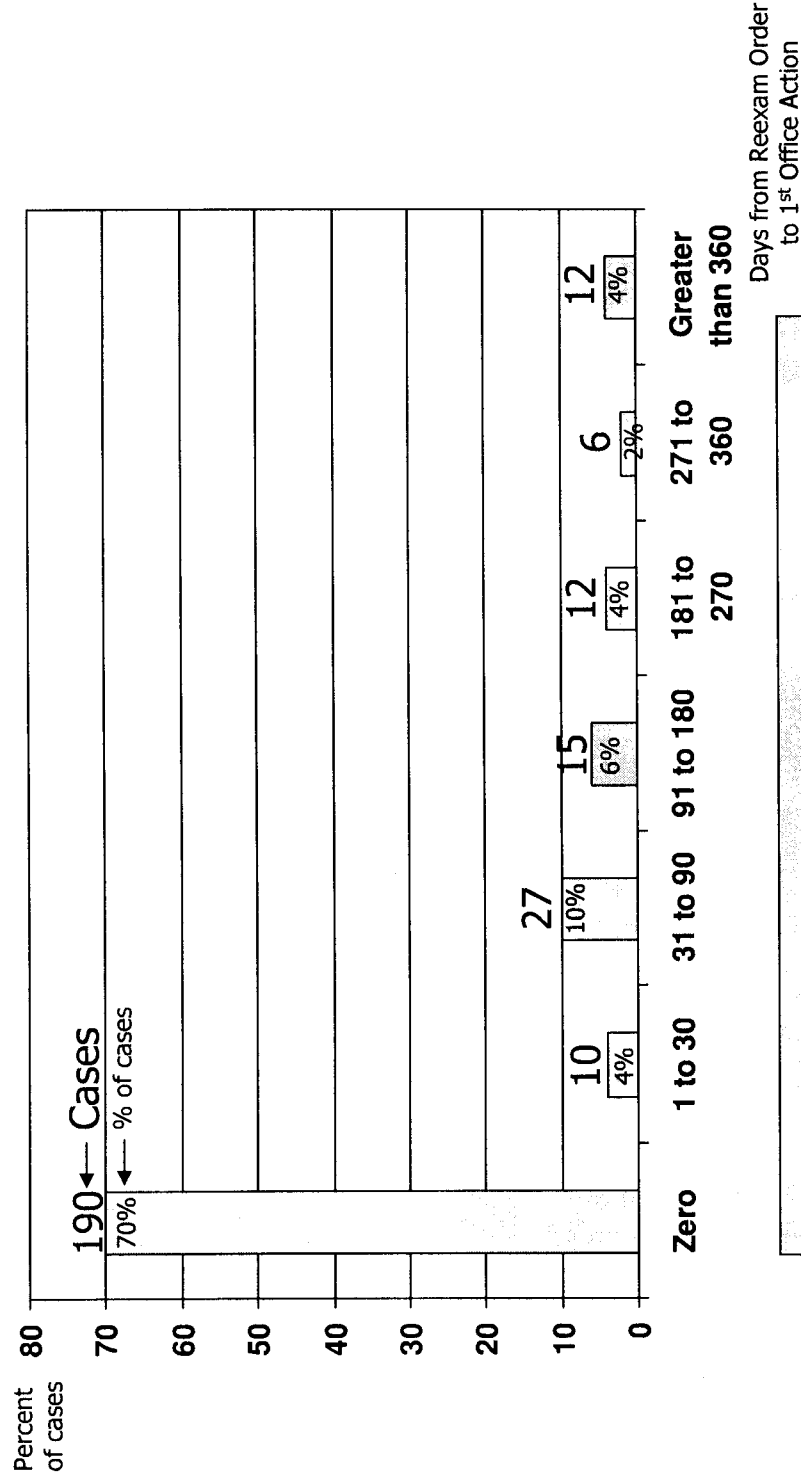


Source: USPTO PAIR Database; Institute for Progress analysis

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Seventy Percent of IPREs receive a 1st Office
Action on the Same Day as the Reexam is Ordered

Distribution of IPRE Cases: Days between Reexam Order and 1st Office Action



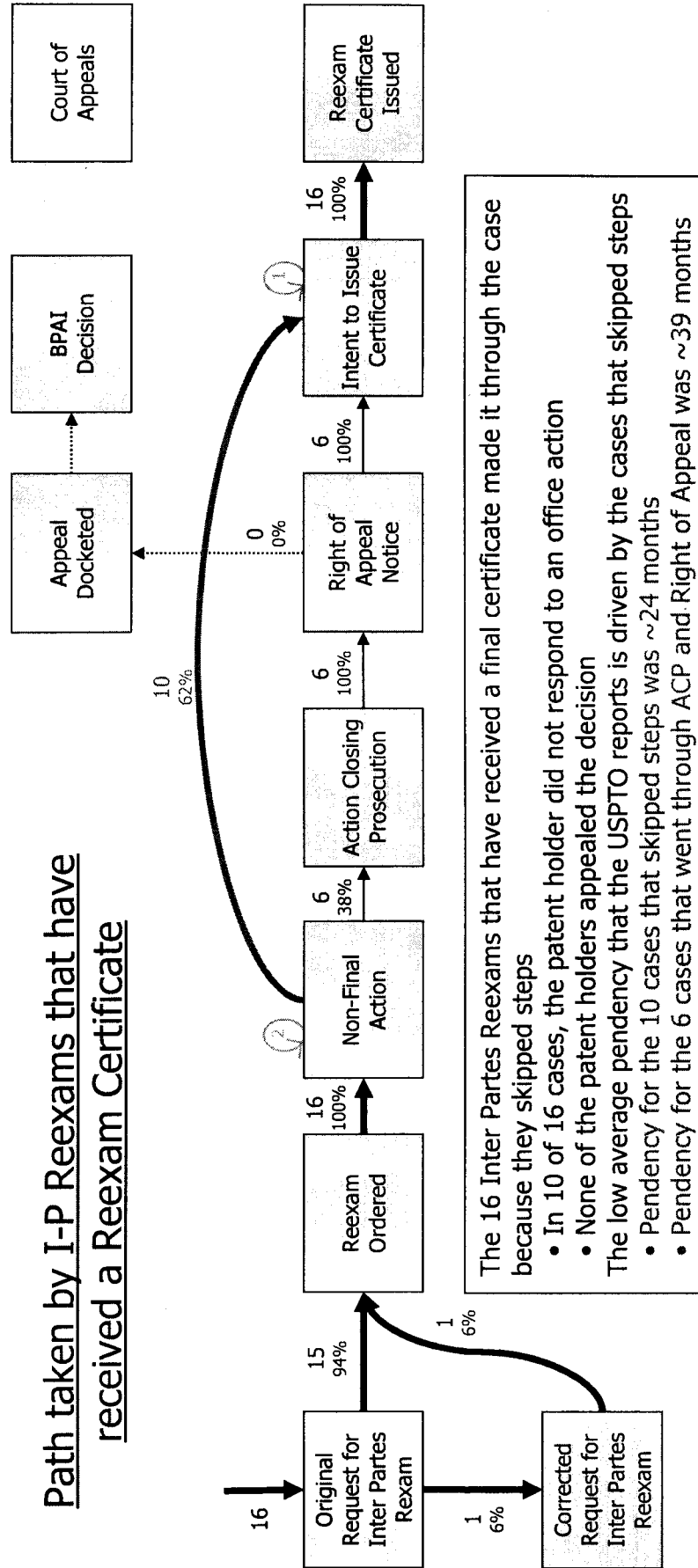
The patent holder is precluded from providing information to the examiner prior to the 1st Office Action

10

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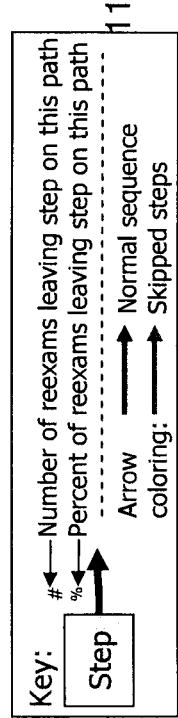
The USPTO Reports an Average Pendency of 28.5 Months; This Estimate is Skewed by Cases that have Skipped Steps

Path taken by I-P Reexams that have received a Reexam Certificate



Note: The 16 cases here include all cases receiving a Reexam Certificate through April 16, 2008. The most recent data published by the USPTO includes only 12 cases through the end of their fiscal year (9/30/2007). The average pendency of these 16 cases is slightly longer (30.1 months) than the USPTO's statistic based on 12 cases.

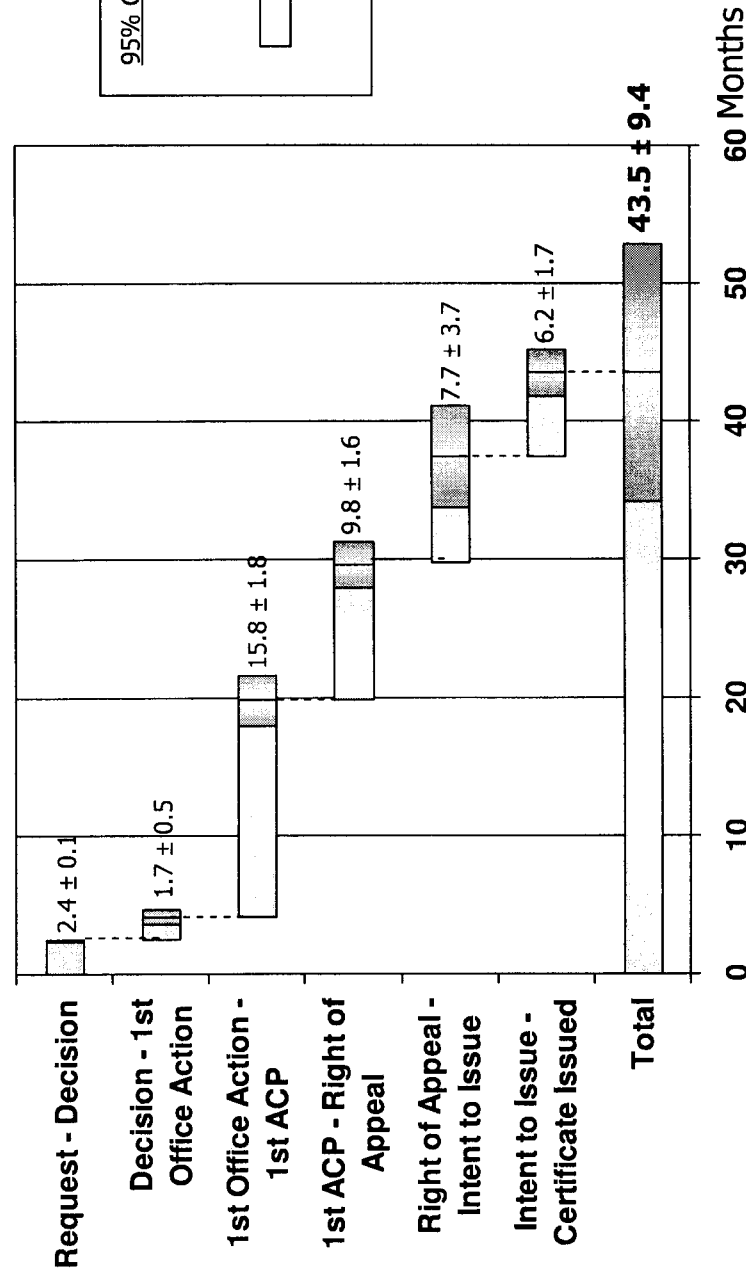
Source: USPTO PAIR Database; Institute for Progress analysis



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The Normal IPRE Process Takes Much Longer than the USPTO's 28.5 Months – even without an appeal

Timeline of Inter Partes Reexams Without Appeal



Without an appeal, the average expected pendency period for inter partes reexams is between 34 and 53 months

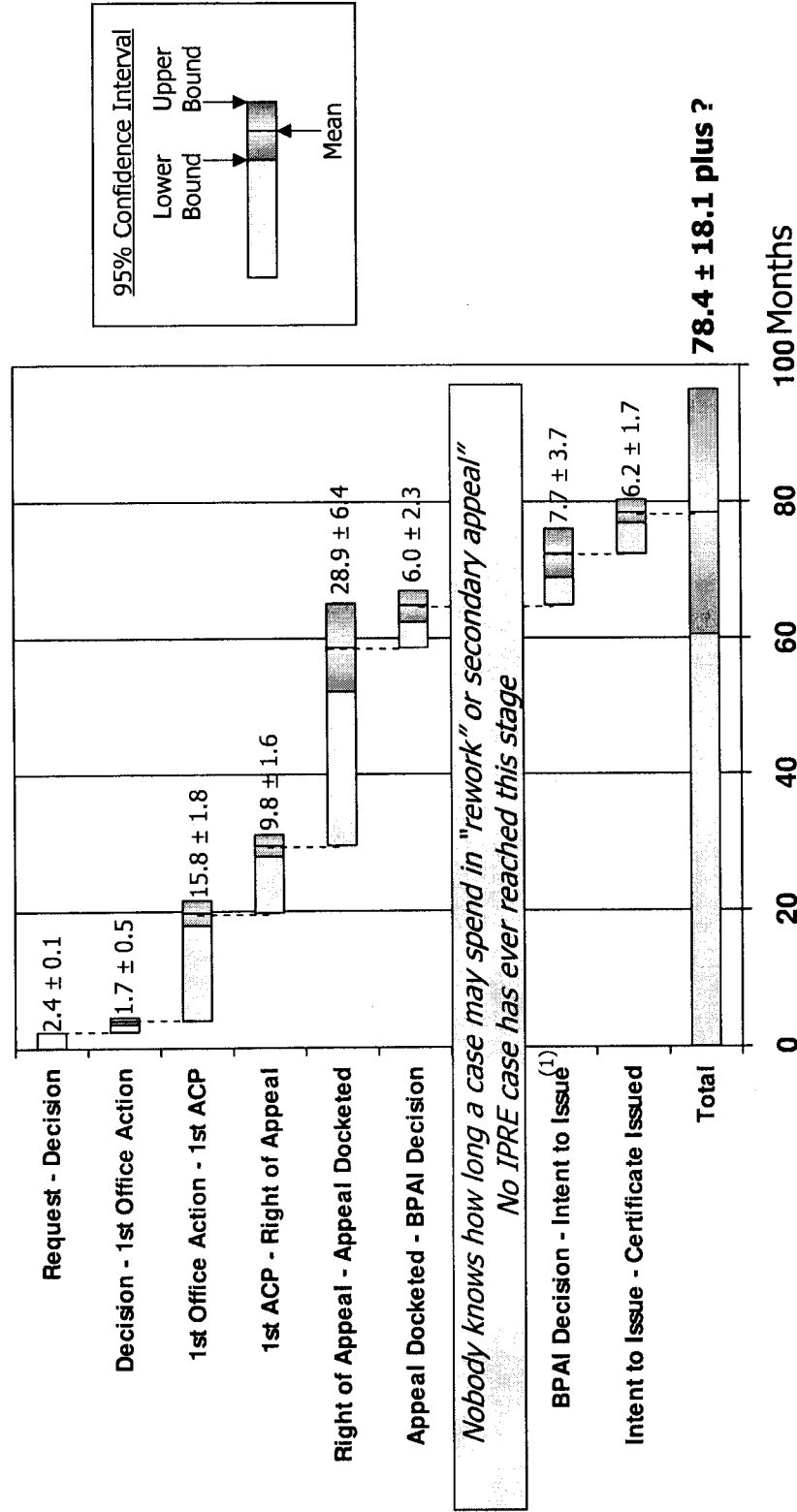
Source: USPTO PAIR Database; Institute for Progress analysis

With an Appeal, the IPRE Process Takes at least Five to Eight Years

This Estimate Does Not Include "Rework" and Secondary Appeals

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Timeline of Inter Partes Reexams With Appeal



With an appeal, the pendency period for inter partes reexams is AT LEAST 60 to 97 months (5-8 years!)
...and that doesn't include "rework" after an appeal or secondary appeals

(1) Assumes the same time from BPAI Decision - Intent to Issue as for Right of Appeal - Intent to Issue
Source: USPTO PAIR Database; Institute for Progress analysis

All Inter Partes Reexams through April 16, 2008

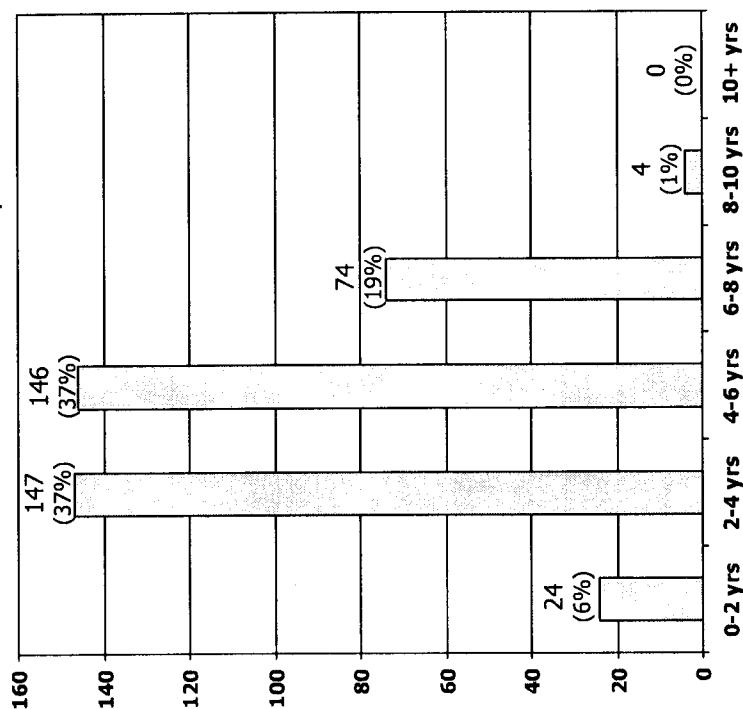
[illegible]

Source: USPTO PAIR Database; Institute for Progress analysis

Patents that go through Inter Partes Reexam are fairly young

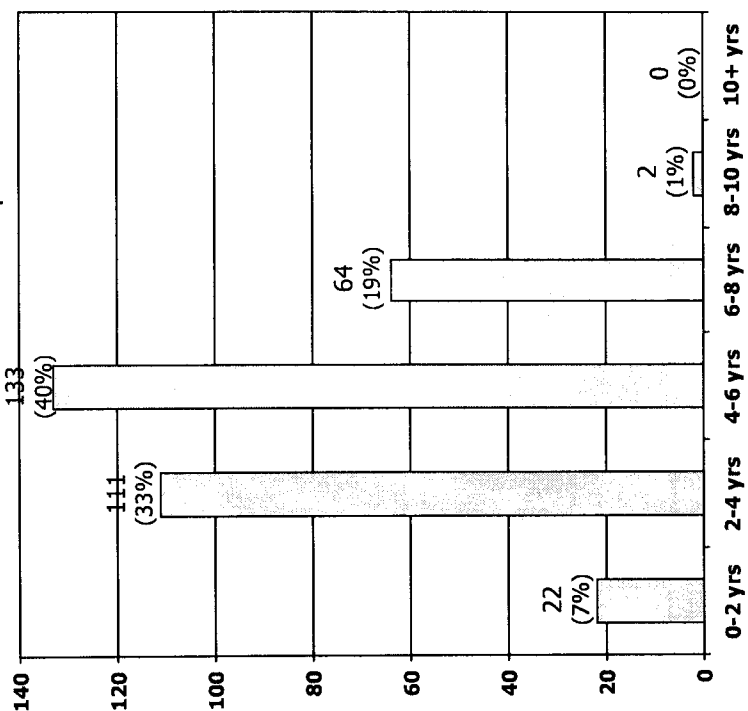
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Years from Patent Grant to
Inter Partes Reexam Requested



# in data set	395
Mean	4.47 years
Median	4.40 years

Years from Patent Grant to
Inter Partes Reexam Requested



# in data set	332
Mean	4.56 years
Median	4.40 years

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About the authors

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Mark Blaxill and **Ralph Eckardt** are founding Fellows of the Institute for Progress, and authors of the upcoming book *The Invisible Edge: Taking Your Strategy to the Next Level Using Intellectual Property* (Portfolio, March 2009). They are managing partners of 3LP Advisors, an investment advisory firm focused on intellectual property transactions. Blaxill is a former vice president of The Boston Consulting Group (BCG) and was head of its Strategy practice initiative. Eckardt is the former head of BCG's Intellectual Property Strategy practice.

EXHIBIT I



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Ex Parte Reexamination Filing Data - March 31, 2009

1. Total requests filed since start of <i>ex parte</i> reexam on 07/01/81.....	9893 ¹		
a. By patent owner	3603	36%	
b. By other member of public	6125	62%	
c. By order of Commissioner	165	2%	
2. Number of filings by discipline			
a. Chemical Operation	2873	29%	
b. Electrical Operation	3404	34%	
c. Mechanical Operation	3456	35%	
d. Design Patents	160	2%	
3. Annual Ex Parte Reexam Filings			
Fiscal Yr. No. Fiscal Yr. No. Fiscal Yr. No.			
1981 78 (3 mos.) 1989 243 1997 376 2005 524			
1982 187 1990 297 1998 350 2006 511			
1983 186 1991 307 1999 385 2007 643			
1984 189 1992 392 2000 318 2008 680			
1985 230 1993 359 2001 296 2009 308 YTD			
1986 232 1994 379 2002 272			
1987 240 1995 392			
1988 268 1996 418 441			
4. Number known to be in litigation.....	2992	30%	
5. Decisions on requests.....			9525
a. No. granted.....	8754	92%	
(1) By examiner	8641		
(2) By Director (on petition)	113		
b. No. denied.....	771	8%	
(1) By examiner	726		

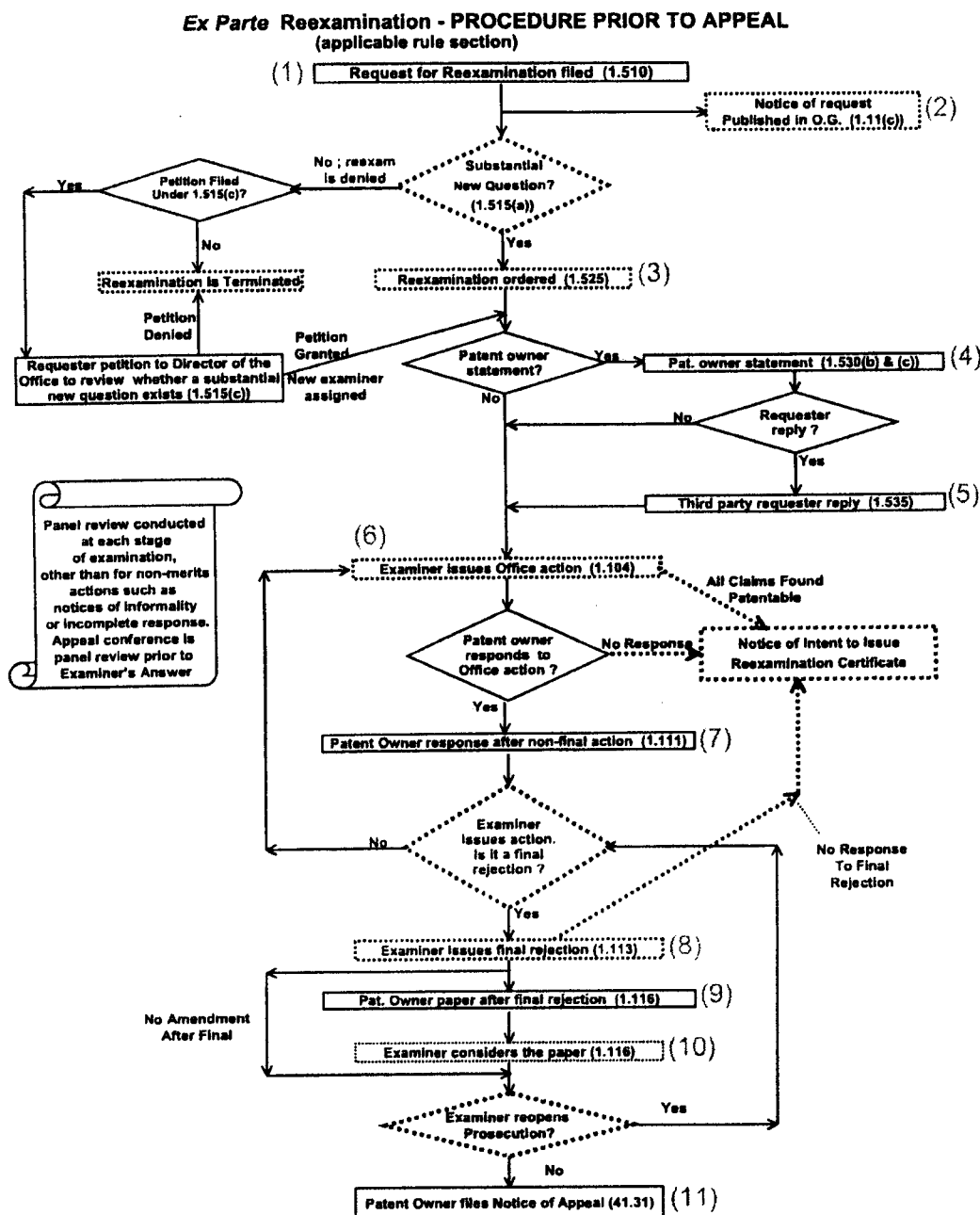
6. Total examiner denials (includes denials reserved by Director).....	849			
a. Patent owner requester	444		52%	
b. Third party requester	405		48%	
7. Overall reexamination pendency (Filing date to certificate issue date)				
a. Average pendency	24.8 (mos.)			
b. Median pendency	19.3 (mos.)			
8. Reexam certificate claim analysis:	<u>Owner</u>	<u>3rd Party</u>	<u>Comm'r</u>	<u>Overall</u>
	<u>Requester</u>	<u>Requester</u>	<u>Initiated</u>	
a. All claims confirmed	22%	27%	12%	25%
b. All claims cancelled	8%	13%	21%	11%
c. Claims changes	70%	60%	67%	64%
9. Total ex parte reexamination certificates issued (1981 – present)	6743			
a. Certificates with all claims confirmed	1681		25%	
b. Certificates with all claims canceled	756		11%	
c. Certificates with claims changes	4306		64%	
10. Reexam claim analysis – requester is patent owner or 3 rd party; or Comm'r initiated.				
a. Certificates – PATENT OWNER REQUESTER	2790			
(1) All claims confirmed	619		22%	
(2) All claims canceled	228		8%	
(3) Claim changes	1943		70%	
b. Certificates – 3 rd PARTY REQUESTER	3806			
(1) All claims confirmed	1044		27%	
(2) All claims canceled	497		13%	
(3) Claim changes	2265		60%	
c. Certificates – COMM'R INITIATED REEXAM	147			
(1) All claims confirmed	18		12%	
(2) All claims canceled	31		21%	
(3) Claim changes	98		67%	

EXHIBIT J

CITATION OF PRIOR ART AND EX PARTE REEXAMINATION OF PATENTS

2201

**>



2201

MANUAL OF PATENT EXAMINING PROCEDURE

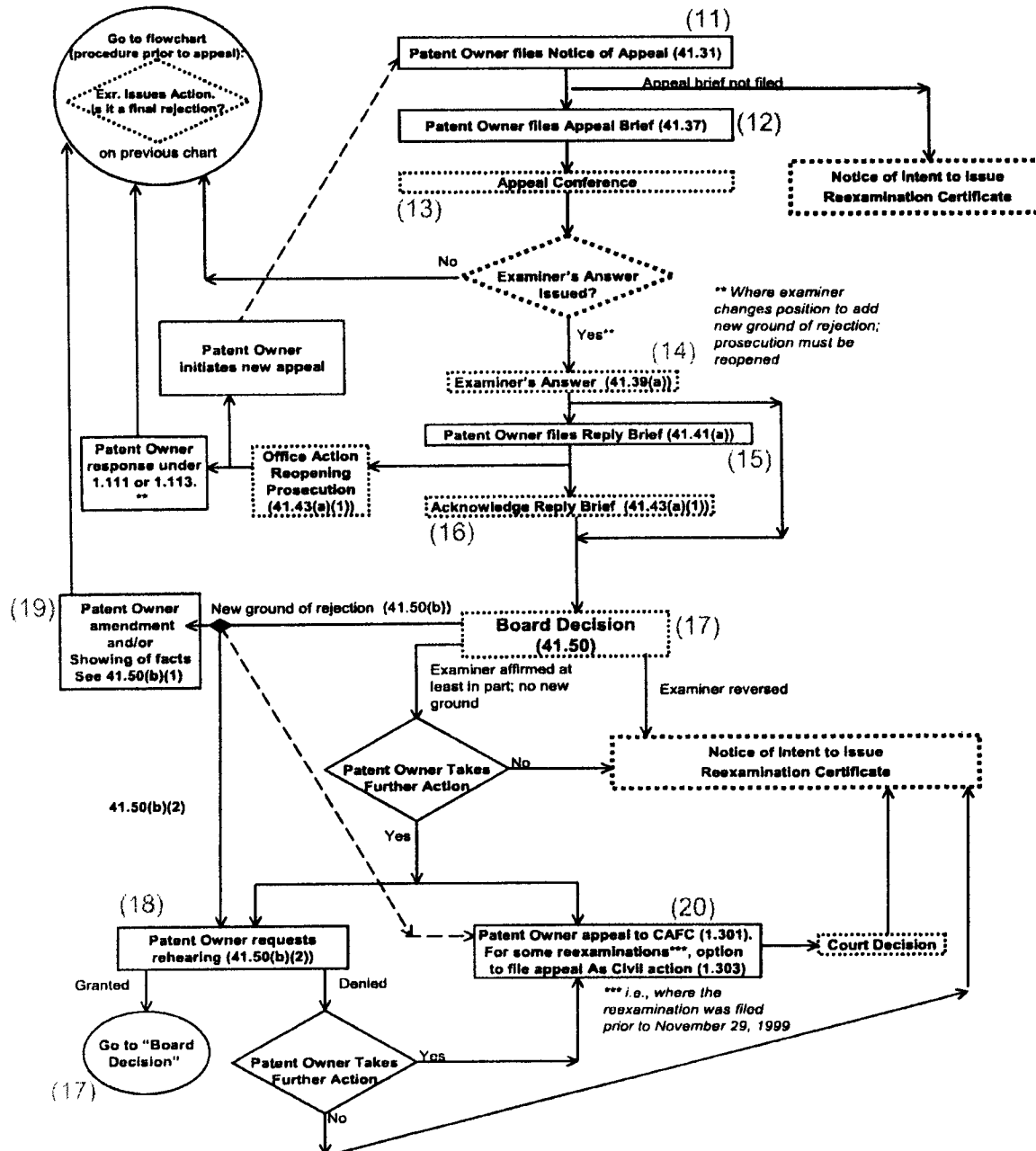
Ex Parte Reexamination – PROCEDURE FROM TIME OF APPEAL
(applicable rule section)

EXHIBIT K

EX PARTE REEXAMINATION TIME LINE (USE WITH MPEP FLOWCHART)

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	
1.	Request for Reexamination filed	37 CFR § 1.510 Request for <i>ex parte</i> reexamination.	
2.	Notice of request Published in Official Gazette	37 CFR § 1.11 Files open to the public.	
3.	Reexamination ordered	37 CFR § 1.525 Order for <i>ex parte</i> reexamination.	
4.	Patent Owner statement	<p>37 CFR § 1.530 Statement by patent owner in <i>ex parte</i> reexamination; amendment by patent owner in <i>ex parte</i> reexamination.</p> <p>(b) The order for <i>ex parte</i> reexamination will set a period of not less than two months from the date of the order within which the patent owner may file a statement on the new question of patentability, including any proposed amendments the patent owner wishes to make.</p>	2 m from ord
5.	Third Party Requester reply	<p>37 CFR § 1.535 Reply by third party requester in <i>ex parte</i> reexamination.</p> <p>A reply to the patent owner's statement under § 1.530 may be filed by the <i>ex parte</i> reexamination requester within two months from the date of service of the patent owner's statement. Any reply by the <i>ex parte</i> requester must be served upon the patent owner in accordance with § 1.248. If the patent owner does not file a statement under § 1.530, no reply or other submission from the <i>ex parte</i> reexamination requester will be considered.</p>	wi ser ow
6.	Examiner issues Office Action	37 CFR § 1.104 Nature of examination.	tim (ca yea

Step No.	Step in <i>Ex Parte</i> Reexam Flow Chart	Relevant Statute or Rules	Time Period
7.	Patent Owner response after non-final action	<p>37 CFR § 1.550 Conduct of <i>ex parte</i> reexamination proceedings.</p> <p>(b) The patent owner in an <i>ex parte</i> reexamination proceeding will be given at least thirty days to respond to any Office action. In response to any rejection, such response may include further statements and/or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.</p> <p>(c) The time for taking any action by a patent owner in an <i>ex parte</i> reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g).</p> <p>(d) If the patent owner fails to file a timely and appropriate response to any Office action or any written statement of an interview required under § 1.560(b), the prosecution in the <i>ex parte</i> reexamination proceeding will be a terminated prosecution, and the Director will proceed to issue and publish a certificate concluding the reexamination proceeding under § 1.570 in accordance with the last action of the Office.</p>	30 days – 6 months
8.	Examiner issues final rejection	37 CFR § 1.113 Final rejection or action.	time period varies (can be over one year)
9.	Patent Owner paper after final rejection	MPEP § 2272.1 The statutory period for response to a final rejection in a reexamination proceeding will normally be two (2) months. If a response to the final rejection is filed, the time period set in the final rejection continues to run. The time period is	within 2 months of final rejection

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		<p>automatically extended by 1 month (in accordance with the guidelines set forth in MPEP § 2265) if the response is the first response after the final rejection and a notice of appeal has not yet been filed. Any advisory Office action using form PTOL-467, Ex Parte Reexamination Advisory Action Before the Filing of an Appeal Brief, which is issued in reply to patent owner's response after final rejection (and prior to the filing of the notice of appeal) will inform the patent owner of the automatic 1 month extension of time. It should be noted that the filing of any timely first response to a final rejection (even an informal response or even a response that is not signed) will automatically result in the extension of the shortened statutory period for an additional month. Note further that the patent owner is entitled to know the examiner's ruling on a timely response filed after final rejection before being required to file a notice of appeal. Notification of the examiner's ruling should reach the patent owner with sufficient time for the patent owner to consider the ruling and act on it. Accordingly, the period for response to the final rejection should be appropriately extended in the examiner's advisory action. See Theodore Groz & Sohne & Ernst Bechert Nadelfabrik KG v. Quigg, 10 USPQ2d 1787 (D.D.C. 1988). The period for response may not, however, be extended to run past 6 months from the date of the final rejection.</p> <p>MPEP § 2272.II The practice of giving the patent owner a time period to supply an omission in a bona fide response (as set forth in MPEP § 2266.01) does not apply after a final Office action. If a bona fide response to an examiner's action is filed after final rejection (before the expiration of the permissible response period), but through an apparent oversight or inadvertence, some point necessary to fully respond has been omitted, the examiner</p>	

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		should not issue (to the patent owner) a notice of failure to fully respond. Rather, an advisory Office action (form PTOL-467) should be issued with an explanation of the omission.	
10.	Examiner considers the paper and may reopen prosecution; Patent Owner may submit amendments, affidavits and other evidence after final Office Action and prior to appeal	37 CFR § 1.116 Amendments and affidavits or other evidence after final action and prior to appeal.	time period varies
11.	[if Examiner does not reopen prosecution –] Patent Owner files Notice of Appeal	<p>37 CFR § 41.31 Appeal to Board. (3) Every owner of a patent under <i>ex parte</i> reexamination filed under § 1.510 of this title on or after November 29, 1999, any of whose claims has been finally (§ 1.113 of this title) rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.</p> <p>37 CFR § 1.134 Time period for reply to an Office action. An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.</p> <p>MPEP § 2273 Appeal in <i>Ex Parte</i> Reexamination The period for filing the notice of appeal is the period set for response in the last Office action which is normally 2 months. The timely filing of a first response to a final rejection having a shortened statutory period for response is construed as including a request to extend the period for response an additional month,</p>	within 2-6 months

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		even if an extension has been previously granted, as long as the period for response does not exceed 6 months from the date of the final rejection. The normal <i>ex parte</i> appeal procedures set forth at 37 CFR § 41.31 through 37 CFR § 41.54 apply in <i>ex parte</i> reexamination, except as pointed out in this Chapter. A third party requester may not appeal or otherwise participate in the appeal.	
12.	Patent Owner files Appeal Brief	<p>37 CFR § 41.37 Appeal brief.</p> <p>(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.</p> <p>(e) The time periods set forth in this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for <i>ex parte</i> reexamination proceedings.</p> <p>37 CFR § 1.550 Conduct of <i>ex parte</i> reexamination proceedings.</p> <p>(c) The time for taking any action by a patent owner in an <i>ex parte</i> reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g). See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.</p> <p>MPEP 2274.III. EXTENSION OF TIME FOR FILING APPEAL BRIEF</p> <p>In the event that the patent owner finds that he or she is unable to file a brief within the time allowed by the rules, he or she may file</p>	within 2 months of Notice of Appeal, but extendable under 1.550(c).

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		a petition with the appropriate extension of time fee, to the Central Reexamination Unit (CRU) or Technology Center (TC), requesting additional time (usually 1 month), and give reasons for the request. The petition should contain the address to which the response is to be sent. If sufficient cause is shown and the petition is filed prior to the expiration of the period sought to be extended (37 CFR 1.550(c)), the CRU or TC Director is authorized to grant the extension for up to 1 month. Requests for extensions of time for more than 1 month will also be decided by the CRU or TC Director, but will not be granted unless extraordinary circumstances are involved; e.g., death or incapacitation of the patent owner. The time extended is added to the last calendar day of the original period, as opposed to being added to the day it would have been due when said last day is a Saturday, Sunday, or Federal holiday.	
13.	Appeal Conference		time period varies
14.	<i>[if examiner does not change position to add new ground of rejection]</i> Examiner's Answer	37 CFR § 41.39 Examiner's answer. (a)(1) The primary examiner may, within such time as may be directed by the Director, furnish a written answer to the appeal brief including such explanation of the invention claimed and of the references relied upon and grounds of rejection as may be necessary, supplying a copy to appellant. If the primary examiner determines that the appeal does not comply with the provisions of §§ 41.31 and 41.37 or does not relate to an appealable action, the primary examiner shall make such determination of record.	time period varies (can range from two months to over a year)
15.	Patent Owner files Reply Brief	37 CFR § 41.41 Reply brief. (a)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.	within 2 months of Examiner's Answer, extendable for good cause

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		(c) Extensions of time under § 1.136 (a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136 (b) of this title for extensions of time to reply for patent applications and § 1.550 (c) of this title for extensions of time to reply for <i>ex parte</i> reexamination proceedings.	shown
16.	<i>[if Examiner still does not reopen prosecution—]</i> Acknowledge Reply Brief	37 CFR § 41.43 Examiner's response to reply brief. (a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.	time period varies
17.	Request for Oral Hearing (not shown in flow chart)	37 CFR § 41.47	within 2 months after Examiner's Answer or Supplemental Examiner's Answer
18.	Oral Hearing Before BPAI (not shown in flow chart)	37 CFR § 41.47	timing varies; typically within 6-12 months after filing of request for oral hearing
19.	Board Decision The Board may: (1) affirm the Examiner's decision (2) reverse the Examiner's decision	37 CFR § 41.50 Decisions and other actions by the Board.	time period varies

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
	(3) remand the proceeding to the Examiner for further consideration; or (4) provide a new ground of rejection		
	<i>[If Board Decision is adverse to Patent Owner]</i>		
20.	Patent Owner requests rehearing <i>[Loop back to Board Decision]</i>	<p>37 CFR § 41.50 Decisions and other actions by the Board. (b) Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims: (2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.</p>	Within 2 months of Board Decision
21.	OR Patent Owner Amendment and/or Showing of new	<p>37 CFR § 41.50 Decisions and other actions by the Board. (b) Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding,</p>	Within 2 months of Board Decision

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
	evidence	<p>which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:</p> <p>(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.</p>	
22.	<p>OR</p> <p>Patent Owner appeals to Federal Circuit [<i>Reexam Certificate issues only upon Court Decision</i>]</p>	<p>37 CFR § 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.</p> <p>Any applicant, or any owner of a patent involved in any <i>ex parte</i> reexamination proceeding filed under § 1.510, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the U. S. Patent and Trademark Office, file a written notice of appeal directed to the Director (§§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. For appeals by patent owners and third party requesters in <i>inter partes</i> reexamination proceedings filed under §</p>	Within 2 months of Board Decision

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		<p>1.913, § 1.983 is controlling.</p> <p>37 CFR § 1.304 Time for appeal or civil action.</p> <p>(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 41.52(a), § 41.79(a), or § 41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In contested cases before the Board of Patent Appeals and Interferences, the time for filing a cross-appeal or cross-action expires:</p> <ul style="list-style-type: none"> (i) Fourteen days after service of the notice of appeal or the summons and complaint; or (ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later. <p>(2) The time periods set forth in this section are not subject to the provisions of § 1.136, § 1.550(c), or § 1.956, or of § 41.4 of this title.</p> <p>(3) The Director may extend the time for filing an appeal or commencing a civil action:</p> <ul style="list-style-type: none"> (i) For good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (ii) Upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect. <p>(b) The times specified in this section in days are calendar days. The time specified herein in months are calendar months except that one day shall be added to any two-month period which</p>	

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		<p>includes February 28. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.</p> <p>MPEP § 2279 Appeal to Courts</p> <p>In an <i>ex parte</i> reexamination filed on or after November 29, 1999, the patent owner may appeal the decision of the Board of Patent Appeals and Interferences only to the United States Court of Appeals for the Federal Circuit pursuant to 35 U.S.C. 141. This is based on the current version of 35 U.S.C. 141 and 35 U.S.C. 145 as they were amended by Public Law 106-113. This "current version" of 35 U.S.C. 141 and 35 U.S.C. 145 applies to appeals in reexamination, where the reexamination was filed in the Office on or after November 29, 1999. See Section 13202(d) of Public Law 107-273.</p> <p>A third party requester of an <i>ex parte</i> reexamination may not seek judicial review. <i>Yuasa Battery v. Comm'r</i>, 3 USPQ2d 1143 (D.D.C. 1987).</p> <p>While the reexamination statutory provisions do not provide for participation by any third party requester during any court review, the courts have permitted intervention by a third party requester in appropriate circumstances. See <i>In re Etter</i>, 756 F.2d 852, 225 USPQ 1 (Fed. Cir. 1985) and <i>Reed v. Quigg</i>, 230 USPQ 62 (D.D.C. 1986). See also MPEP § 1216, § 1216.01, and § 1216.02. A third party requester who is permitted to intervene in a civil action has no standing to appeal the court's decision, <i>Boeing Co. v.</i></p>	

Step No.	Step in <i>Ex Parte</i> Reexam FlowChart	Relevant Statute or Rules	Time Period
		Comm'r, 853 F.2d 878, 7 USPQ2d 1487 (Fed. Cir. 1988).	